North Carolina
Mental Health Study Commission

Final Report and Recommendations

February, 1985

For further information:

MENTAL HEALTH STUDY COMMISSION
Albemarle Building, Room 1162
325 N. Salisbury Street
Raleign, N.C. 27511
919/733-6077

NORTH CAROLINA

MENTAL HEALTH STUDY COMMISSION

FINAL REPORT AND RECOMMENDATIONS

To the Governor and
The 1985 General Assembly

Senator Kenneth C. Royall, Jr., Chairman
Senator Harold W. Hardison, Vice-Chairman
Representative Chris S. Barker, Jr., Vice-Chairman
Representative R. D. Beard
Mr. Gus N. Economos
Senator Ollie Harris
Representative C. B. Hauser
Mr. John T. Henley
Mr. V. B. Johnson
Dr. Ben J. Lawrence
Representative Edith L. Lutz
Mrs. Betty Moore
Mr. Jack Palmer, Jr.
Mr. Benjamin D. Schwartz
Ms. Malvise A. Scott
Senator Lura Tally
Dr. John W. Varner

FEBRUARY 1985

State of North Carolina
Mental Health Study Commission

ALBEMARLE BUILDING - ROOM 1162
TELEPHONE 919/733-6077

325 N. SALISBURY STREET
RALEIGH 27611

February, 1985

Dear Governor, Members of the 1985 General Assembly and
Citizens Interested in Mental Health

Herein is the report of the Mental Health Study Commission. I would like to thank the members of the Study Commission, both appointed and ex-officio, for their many hours of deliberation. It is through those hours spent in meetings and at public hearings that the serious concerns and problems can be solved. Let me also thank the staff of the Department of Human Resources, Division of Mental Health, Mental Retardation and Substance Abuse Services for their assistance in addressing the issues before the Study Commission.

Most of all, I would like to thank the one hundred plus individuals who appeared at our public hearings and shared with the Study Commission their concerns and ideas on how the system might be improved.

I commend to the reader the recommendations here presented. The members of the Mental Health Study Commission are available to answer any questions. On behalf of all who participated so actively in this Study, I urge your support of these proposals.

Sincerely yours,

Kenneth C. Royall, Jr.

Kenneth C. Royall, Jr.
Chairman

SYNOPSIS

The Final Report and Recommendations of the Mental Health Study Commission includes five legislative proposals. In response to Resolution 21, the Study Commission reviewed current funding policies for area programs and specifically, as directed, reviewed the financial responsibility of local and State governments under the Continuity of Care statute. The report includes legislation to address the concerns related to Continuity of Care. The Commission, however, has not completed its work in the general funding policy area and recommends the continuation of the Study Commission with a priority on continuing the funding study effort.

In response to Resolution 50, the Study Commission has developed a draft of Chapter 122C and Related Statutes. Because the task of developing the draft recodification of Chapter 122 was undertaken with the goal to not include any major policy changes that would be controversial or would require an appropriation, a couple of bills were developed separately. One of these is legislation that would establish service planning and management for all individuals with Developmental Disabilities within the Mental Health, Mental Retardation and Substance Abuse System. The other legislation is specific to services for the Autistic and includes a program development effort that was planned in response to a legislative directive. The final area in which separate legislation was considered is the judicial

review of admissions of minors to psychiatric facilities. However, the Study Commission decided that alternatives to judicial review would require further study and this subject, within the broad category of Child Mental Health, should be identified as another priority effort in the continuation of the Study Commission.

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DESCRIPTION OF THE MENTAL HEALTH STUDY COMMISSION

The Mental Health Study Commission was created by the 1973 General Assembly Resolution 80. It has been extended every two years by each succeeding General Assembly. The original purpose of the Study Commission has remained the same--to study and evaluate the service delivery system for mental health, mental retardation, alcoholism and other related services. During each extension the Study Commission has responded to this purpose and has prepared recommendations to the Governor and the General Assembly regarding improvements to that system of services.

The membership of the Study Commission has been changed since the original Resolution. The current Study Commission includes five persons appointed by the President of the Senate, five persons appointed by the Speaker of the House and eight persons appointed by the Governor. All of the House Mental Health Committee members and all of the Senate Human Resources Committee members serve in an ex-officio capacity to the Study Commission. The Governor appoints the chairman and the membership elects two vice-chairmen.

A list of the Study Commission appointed members and ex-officio members is presented in Appendix A.

INTRODUCTION

The 1983-85 activities of the Study Commission were directed by two resolutions that were ratified by the 1983 General Assembly. Resolution 21 directed the Study Commission to study the State's funding policies for area mental health, mental retardation and substance abuse programs with particular emphasis on the relative fiscal responsibilities under the 'continuity of care' provision of the General Statutes.

Resolution 50 directed the Study Commission to prepare a draft recodification of Chapter 122 (Hospitals for the Mentally Disordered) and related statutes.

Because both of these tasks were considered to be major efforts, the Commission elected to divide into two working committees that would develop proposals for consideration by the Commission as a whole. (Appendix A includes a list of members by Committee.) Each committee--Funding and Recodification--developed its own work plan and each is described later in this report.

In September of 1984 the Commission received the recommendations of each committee and incorporated the recommendations into a draft of Chapter 122C. At the same time several other issues were identified as areas in which the Commission would consider separate legislation. The draft of Chapter 122C and a brief description of content areas for separate legislation were sent out for public review and comment.

This report includes the final drafts of Chapter 122C and the other legislative proposals. Copies of the proposals are presented in Appendix I. Also included is further descriptive detail of the process followed by each committee and the Commission as a whole. The appendices include other supporting documents. Further information is available in the office of the Study Commission - Room 1162, Albemarle Building, 325 N. Salisbury Street, Raleigh, N. C. 27611, 919/733-6077.

FUNDING STUDY

Organizational Structure and Process

The primary objectives of the Funding Committee were established by Resolution 21 of the 1983 General Assembly. (See Appendix B for a copy of Resolution 21.) Because these objectives were set, the Committee determined that the only preliminary steps necessary to respond to the charge were: (1) to review the current status of funding to community programs and (2) to conduct a mini-hearing to receive comments and suggestions from interested persons.

All of the Committee's work was conducted as a committee of the whole. Initially the Committee met and received a summary of the different types of funds received by area mental health, mental retardation and substance abuse programs statewide, a description of the general relationship between State, local and federal funds and summary data on trends in the funding of community programs. At this same meeting the Committee was introduced to concerns raised specific to the Continuity of Care statute, G.S. 122-55.8. (See Appendix C for a copy of G.S. 122-55.8). In addition, the Committee received public comment from numerous individuals regarding funding policies. (See Appendix D for a listing of the concerns raised at this mini-hearing.)

Staff was directed to investigate a variety of funding policy and funding/service provision questions through data

analyses. The Division of Mental Health, Mental Retardation and Substance Abuse Services was asked to respond to the questions raised regarding the Continuity of Care statute.

Subsequent meeting agenda included staff reports on data analysis and further questions, further discussion on the Continuity of Care statute, and a review of the current Chapter 122 provisions that address funding policies. The purpose of this last task was to prepare draft language to be incorporated into the Chapter 122C proposal that was being developed by the Recodification Committee.

Recommendations

Extensive data analyses on an area by area basis revealed a great variation in the funding resources available to each area program. The data did not reveal any significant relationships between services provided and resources available. However, it is to be noted that inadequacies of the data itself probably affected the results of the analyses.

The data analyses did not lead to strong suggestions regarding ways in which to solve the big funding policy questions. Also the variety of suggestions received were inconsistent with each other. Because of these problems the Funding Committee was unable to reach a consensus regarding any significant or major changes to the State's funding policies for community programs.

In addition, the Committee believed that the formulation of consensus policy recommendations would require the active participation of representatives of a variety of groups that have a stake in those funding policies. The Legislature, the State

administration (at divisional, departmental and State budget office levels), area programs, county commissioners, and special interest groups all have different perspectives on how to project the need for appropriations, how allocations should be made and how accountability policies should be formulated. The Committee did not have time to work with these groups to try to establish consensus recommendations.

As a result the Commission elected to recommend that no significant funding policy changes be included in either the recodification draft or as separate legislation.

> Rather, the Commission recommends that the Mental Health Study Commission be continued for an additional two-year period and that the funding policy question be established as a primary study question in that continuation. (See Legislative Proposal #1 in Appendix I.)

The Committee did review current statutory language in Chapter 122 that pertains to funding policies and prepared the draft language incorporated into the Recodification Draft. Changes are described in the Substantive Change List in Appendix L.

During its process the Committee delayed its formulation of recommendations regarding the financial responsibilities under Continuity of Care until after it had made final decisions regarding the overall funding policy questions. Since it had recommended no major policy changes, the Continuity of Care questions were finally addressed independently by the full Commission.

The primary concern brought before the Commission regarding Continuity of Care is that the language in the current statute is vague and does not clearly state any limits on an area's financial

responsibility for a continuity of care client. Counties expressed concern that this would place an undue and never ending commitment on local resources. Other concerns focused around the uncooperative client/family, the client who ages out of a specifically funded program and general problems encountered when circumstances beyond the control of the local program necessitate the closing of a program or changing of program priorities.

The legislative proposal presented by the Study Commission to amend the Continuity of Care provisions as presented both in current law and in the draft Chapter 122C is designed to clarify the majority of issues of concern. The proposal more clearly delineates the responsibilities of the provider facility, the area program and the State. The area program's (and thus the county's) financial responsibility is limited to 60 days. At the end of 60 days, if an alternative placement has been arranged applicable State resources will move with the client. If an alternative placement has not been arranged, the State will, at least temporarily, place the client in a State facility until an alternative can be found. The proposal does not alter the client's ultimate right to an alternative residential placement unless the client or his family breaks a contractual agreement regarding placement or the client or his family fails to cooperate regarding the alternative placement.

> The Commission recommends that the General Assembly adopt legislation to clarify responsibilities under the Continuity of Care statute. (See Legislative Proposal #2 in Appendix I).

RECODIFICATION

Organizational Structure and Process

Resolution 50 of the 1983 General Assembly directs the Mental Health Study Commission to prepare a draft recodification of Chapter 122 (Hospitals for the Mentally Disordered) of the N.C. General Statutes. (See Appendix E for a copy of Resolution 50.) The Recodification Committee, met originally as a whole to consider the reasons for recodification, the structure and content of Chapter 122 and alternative strategies for the process of developing a draft. The process developed included the endorsement of a tentative outline for Chapter 122C (the recodification draft) and a tentative timetable.

Recognizing the difficulty and size of the task ahead, the Committee requested the staff assistance of the Division of Mental Health, Mental Retardation and Substance Abuse Services.

The outline of Chapter 122C that was adopted by the Committee included a proposal for six articles within the Chapter. The Committee decided to establish four ad hoc committees to review drafts of the various articles that would be prepared by staff committees of the Division. The articles were assigned to ad hoc committees as follows:

Ad Hoc 1--Articles 1, 2, & 6
Ad Hoc 3--Article 3
Ad Hoc 4--Article 4
Ad Hoc 5--Article 5

Members of the Recodification Committee were assigned to specific ad hoc committees upon their request. The Division established

five working staff committees along similar lines. These work groups consisted of professionals who were considered expert in the content area of the article and were chaired by a member of the Division's State Management Team and staffed each by an attorney who was responsible for drafting and answering legal questions. (See Appendix F for a list of the Division's work groups.)

Each Division work group developed a draft of its given article and presented the draft to the appropriate Ad Hoc Committee for review and discussion. Staff of the work groups were available to the ad hoc committees to explain the content of the draft, to answer questions about current law and practice and to provide assistance to the committees as changes for the drafts were considered.

Because the process was to develop a proposal for Chapter 122C through the work of smaller committees, it was recognized that one of the most difficult tasks would be to maintain consistency in terminology and style. Since Article 1 would include the policy statement and definitions and since Articles 2 and 6 were not expected to include many changes from current law, the members of the Ad Hoc 1 Committee were asked after their first meeting to each serve on one of the other ad hoc committees to monitor consistency and to assist in their later development of definitions.

Before ad hoc committees began their meetings, the full Recodification Committee met to hear from individuals and interest groups at a mini-public hearing held on February 1, 1984.

Speakers were invited to raise concerns and questions and to make suggestions on issues that should be considered in the development of the draft of Chapter 122C. (See Appendix G for a summary listing of the comments received at the mini-hearing.)

Beginning in April, 1984, the ad hoc committees met regularly to review the draft articles that had been prepared by the Division work groups. All of the meetings were open meetings and were attended by representatives of various interest groups. The chairman of each of the ad hoc committees welcomed the questions and suggestions of the audience and when the members agreed to the issues raised or when the members themselves wished to make changes, the draft was amended accordingly.

In September, 1984, the full Study Commission met to receive and review the Draft Chapter 122C that had been developed by the various ad hoc committees of the Recodification Committee. On September 19, 1984, the Study Commission adopted a "First-Final Draft" of Chapter 122C and Related Statutes. This draft was mailed to State agencies, area programs, special interest groups and interested individuals with an invitation to appear and comment at two scheduled public hearings and to submit written suggestions to the Commission by November 15, 1984.

Public hearings were held in Charlotte on November 9 and in Raleigh on November 15. (See Appendix H for list of presenters at these hearings.) The Study Commission made a commitment to those who presented or commented in writing to review all written suggestions for change at meetings of the full Commission in December.

On December 4, 10, and 17, the Study Commission met to review the written suggestions for change which staff prepared in a summary format for review. Staff was directed to incorporate accepted changes into a final draft and the Commission met again in January to review and adopt the final report and final draft. (See Appendix I for Legislative Proposal #3--Chapter 122C and Related Statutes.)

Charge and Philosophy

In reviewing Chapter 122, the Study Commission observed that there were several important reasons for taking on the task of recodification. Chapter 122 is organized in a format originally established in 1899, the last year when the mental health laws were rewritten in their entirety. Since 1899 each session of the General Assembly has amended the code and altered the format as seemed appropriate at the time. Some of the code includes not only antiquated style and structure but antiquated language such as referral to clients as inmates and feebleminded. Additionally, some terms are used inconsistently as different articles within the code have their own definitions; terms such as 'treatment facility' are defined somewhat differently in different articles. Consequently, applicability of various articles is confusing. The Study Commission also believes that the organization of Chapter 122 does not reflect the reality of the organizational structure of the public system. The distinctive parts (area programs, centers for the mentally retarded, the alcoholic rehabilitation centers, the psychiatric hospitals) are described

in varying degrees of detail and there is not an adequate representation of their relationship to each other.

At the beginning of its process, the Recodification Committee asked its attorney to review the purpose and definition of "recodification" (see copy of memorandum in Appendix K). While the term recodification literally refers to the rewriting, reorganizing and restructuring of a code, it is not limited solely to these characteristics if the sponsors are willing to justify other changes in the proposed statute. The Commission worked under the guidelines of its Chairman in formulating the draft and in determining what types of changes would be acceptable within the development of Chapter 122C. The primary principle that was followed was that the draft should be descriptive of current policies and operating practices. Secondly, policy changes would be incorporated if they were neither controversial nor were they to require appropriations in order to be implemented.

Types of Changes Included in Chapter 122C

Most of the changes incorporated in the draft are simple modernizations of current statutory language and structure. In addition the draft includes four types of changes which fall within the directives of the Chairman and the purpose of including changes that the sponsors are willing to justify to the legislature.

Deletions: Some of the provisions of Chapter 122 have been excluded from the draft 122C because they do not reflect current policies or procedures. Many of the deletions are antiquated provisions which have inadvertently remained in the code for years. Others are

specific provisions which are deleted because the Commission believes that the concept is covered in a more general statement in the draft. Finally, a very few provisions are deleted because the Commission has recommended a policy change that is inconsistent with the current law. (See Appendix M for a list.)

Consistency Provisions: In several cases new provisions are incorporated in the draft to be consistent with other General Statutes. Similarly some changes are recommended to make the provisions within Chapter 122C consistent with each other as some policy inconsistencies exist in the current chapter.

Codification of Current Policies and Procedures: The principle of incorporating into the code the provisions necessary to be descriptive of current policies and procedures necessitated the inclusion of several provisions that are new to the statutes but are not new to the practice of providing mental health, mental retardation and substance abuse services.

Substantive Change Proposals: Based on testimony received at its hearings, through comments made at work sessions and through correspondence to the Study Commission several policy changes have been incorporated draft Chapter 122C. These policy changes are incorporated because the Study Commission believes current law, policies and procedures need to be changed in order to improve the functioning of the system or because

current provisions are considered unworkable. In each case these changes are not considered controversial or to require an appropriation. (See Appendix L for a list by section of these changes.)

Supplemental Documents

In addition to Appendix L which includes a listing of the substantive change proposals, a list of sections, subsections or concepts that have been recommended for deletion is presented in Appendix M.

Appendix N is a listing of the conforming changes in the draft legislation that deal with related statutes. Appendix O includes a series of documents that individually relate to decisions made by the Commission to include or exclude a specific provision. They are included in the report in order to assist in any interpretations that might be made at a later time.

Summary

In summary, the Study Commission recommends that the General Assembly adopt "The Mental Health, Mental Retardation, and Substance Abuse Act of 1985." (See Legislative Proposal #3 in Appendix I.)

SEPARATE LEGISLATION

As stated earlier, in the development of the recodification, the Commission decided it would not include any recommendations in the Draft 122C that were either controversial or that would require an appropriation. Two issues emerged during the process that fit these guidelines.

Juvenile Admissions Law

Several people raised concern and question about the value of the judicial review of admissions of minors to restrictive facilities like psychiatric hospitals. Some argued that the policy to require a hearing is anti-therapeutic for the minor. Others argued, however, that the procedures were a crucial protection of a minor's rights to due process.

In September 1984 the Commission asked the Division of Mental Health, Mental Retardation and Substance Abuse Services to develop draft legislation that would establish an alternative to judicial review. That draft was introduced to the Study Commission at its December 17 meeting. In addition to being concerned about the extreme controversial nature of the proposal, the Commission is also concerned that the proposal has not been reviewed in detail by either the Commission itself or by the wide range of groups that have an interest in the matter.

As such the Commission elected not to include a recommendation in this report to change the juvenile admissions law procedures. Recognizing that the interest will continue in this and other

child mental health questions, however, the Study Commission has identified 'child mental health services including the juvenile admissions law' as a priority subject for study during its continuation 1985-87. (Legislative Proposal #1 Appendix I.).

Services for Individuals with Developmental Disabilities

Through testimony received at its mini-hearings, larger public hearings and in writing, the Commission learned about the needs of many Developmentally Disabled individuals and persons with head injuries. (See Appendix J for a list of persons who advocate for the development of a statutory mandate for services for the Developmentally Disabled and Head Injured.)

The major classes of disability that fall within the functional definition of 'developmental disability' are the mentally retarded, cerebral palsied, autistic, epileptic and spina bifida individuals. The State's Developmental Disability Council is established to comply with federal requirements and plays a major role in coordination between State agencies and identification of needs and support of model projects through federal funds. But other than the inclusion of the mentally retarded within the service responsibility of the Division of Mental Health, Mental Retardation and Substance Abuse services, the developmentally disabled to not have a service home within the State system. Practically, what this means is that no agency is responsible for planning to meet the broad life service needs of these individuals and nowhere in the development of the State budget can these needs emerge as priorities. It is true that the State has responded to meet some of the needs of developmentally disabled persons. Several group

homes for autistic have been established in recent years. Special health services are provided through the Crippled Children's program. Vocational Rehabilitation services are available for those who may be employable. And, the public education system has in recent years become responsible and responsive to meet the educational needs.

However, the family of a developmentally disabled/non-retarded individual must go from agency to agency seeking services and support. If a developmental day care center exists in the family's community but the child is disabled in some other way than retardation, the center has no resources to serve the child. Similarly, the Adult Developmental Activity Program might be able to accommodate another client, but the funding resources are fully utilized by the mentally retarded in that community.

Another group of individuals who suffer from the lack service planning and the lack of access to existing services generally are those persons who suffer a traumatic head injury after the age of 22. Those who are severely disabled by such injury, in ways similar to the developmentally disabled, cannot legitimately access services like group homes or adult day activity programs because they are not mentally retarded.

In summary, what the advocates are seeking is an agency home at both the State and community levels. In response the Study Commission has developed draft legislation that places both case management (accessing and financial support for services) and planning for all developmentally disabled within the community and State mental health, mental retardation and substance abuse

system. Within this legislation the definition of developmentally disabled has been adjusted to also accommodate those individuals who suffer traumatic head injuries after the age of 21.

> Legislation ("An Act Concerning Services To Individuals With Developmental Disabilities") is presented, however, with the intention of expressing support to find a solution to these problems. The Study Commission had hoped to work with the Department of Human Resources to assure that the proposal is the best solution. Unfortunately, because of the change in administrations, the new Secretary of Human Resources has not had adequate opportunity to study this recommendation and to formulate his position regarding it. As such the Study Commission will hold this bill until March 1, 1985 at which time the Secretary will report to the Commission on either his support for the proposal as drafted recommendations for change. (See Legislative Proposal #4 in Appendix I.)

Results of Autism Study

The 1983 General Assembly, through special provisions in budget bills adopted in 1983 and 1984, appropriated $35,000 each year to the Division of Mental Health, Mental Retardation and Substance Abuse Services to design and establish a program plan for autistic persons who have aged out of the public school system. The Division presented to the Study Commission at its December 17 meeting a preliminary report and series of recommendations as a result of this study. The Governor's Recommended Budget for 1985-87 includes in priority #28 under the Department of Human Resources a reserve of $500,000 to implement services for this group.

> The Study Commission recommends that the General Assembly appropriate funds to begin implementation

of the plan to serve adult autistic adolescents and adults. This legislation was developed in draft format by the advisory committee of the Autism Study. However, like the legislation related to services for all developmentally disabled, this legislation has not been reviewed in detail by the new Secretary. Therefore, the Study Commission will hold this legislation until March 1, 1985 at which time the Secretary will report to the Commission regarding his position on the recommendation. (See Legislative Proposal #5 in Appendix I.)

SUMMARY

The major piece of work undertaken by the Mental Health Study Commission during its 1983-85 tenure is the Draft Chapter 122C--Mental Health, Mental Retardation, and Substance Abuse Act of 1985. This report includes a description of the process that was followed to develop the draft and descriptions of the deletions from Chapter 122, the conforming changes to other statutes and all substantive changes. The significance and size of this product, however, in no way lessens the importance of the other four legislative recommendations.

Included in the package is a proposal to extend the Mental Health Study Commission for an additional two year period in order to continue work on the study of funding policies for community programs and to undertake a special study of child mental health issues including the juvenile admissions law.

Revisions that are proposed to the Continuity of Care for Mentally Retarded statute are not intended to reduce the rights of the individual with mental retardation but rather to clarify administrative and financial responsibility under the law.

The results of the legislatively mandated Study on the Needs of Autistic who have aged out of the public school system have been formulated into a legislative proposal to expend the funds recommended in the Governor's 1985-87 Budget Proposal Priority DHR #28. The specific proposal for autism, as a result of the

study, is accompanied by another legislative proposal that would establish an agency home for all developmentally disabled persons. Both of these pieces of legislation are strongly recommended to indicate the Commission's interest and commitment to respond to these needs. However, the Commission will hold these bills for introduction until March 1, 1985 at which time the new Secretary of Human Resources will report to the Commission his recommendations regarding these proposals.

Appendix A

MENTAL HEALTH STUDY COMMISSION

Appointed Members

SENATOR KENNETH C. ROYALL, JR.
CHAIRMAN
Post Office Box 8766
Durham, North Carolina 27707
Telephone: 919-828-7195

LT. GOVERNOR APPOINTEES

SENATOR HAROLD W. HARDISON
Box 128
Deep Run, North Carolina 28525
Telephone: 919-523-0023 or 5703

SENATOR OLLIE HARRIS
Post Office Box 627
Kings Mountain, North Carolina 28086
Telephone: 704-739-2591

MR. JOHN T. HENLEY
N.C. Association of Independent
Colleges and Universities
1300 St. Mary's Street
Raleigh, North Carolina 27605
Telephone: 919-832-5817

MR. BENJAMIN D. SCHWARTZ
205 Forest Hills Drive
Wilmington, North Carolina 28403
Telephone: 919-762-7780

SENATOR LURA TALLY
3100 Tallywood Drive
Fayetteville, North Carolina 28303
Telephone: 919-484-4868

SPEAKER APPOINTEES

REPRESENTATIVE CHRIS S. BARKER, JR.
Box 988
New Bern, North Carolina 28560
Telephone: 919-633-1333

REPRESENTATIVE R.D. BEARD
2918 Skye Drive
Fayetteville, North Carolina 28305
Telephone: 919-484-9935

REPRESENTATIVE GUS N. ECONOMOS
2400 Dalesford Drive
Charlotte, North Carolina 28205
Telephone: 704-597-9894

REPRESENTATIVE C.B. HAUSER
2072 K Court Ave., NW
Winston-Salem, North Carolina 27105
Telephone: 919-722-8708

REPRESENTATIVE EDITH L. LUTZ
Route 3, Box 197
Lawndale, North Carolina 28090
Telephone: 704-538-7818

GOVERNOR APPOINTEES

MR. V.B. (HAWK) JOHNSON
Post Office Box 1109
Raleigh, North Carolina 27602
Telephone: 919-828-0635

DR. BEN J. LAWRENCE
813 Rockford Street
Mt. Airy, North Carolina 27030
Telephone: 919-786-7871

MRS. BETTY MOORE
500 Yarmouth Road
Raleigh, North Carolina 27608
Telephone: 919-787-9028

MR. JACK PALMER, JR.
514 North Lafayette Street
Shelby, North Carolina 28150
Telephone: 704-482-1292

MS. MALVISE A. SCOTT
Wake Health Services, Inc.
Post Office Box 10155
Raleigh, North Carolina 27605
Telephone: 919-755-1888

REPRESENTATIVE JOHN VARNER
116 Ridgewood Drive
Lexington, North Carolina 27292
Telephone: 704-246-4234

Appendix A (cont.)
Mental Health Study Commission
COMMITTEE ASSIGNMENTS
(Appointed and ex-officio members)

RECODIFICATION COMMITTEE

Senator Ollie Harris
Co-Chairman

Representative Chris S. Barker, Jr.
Co-Chairman

Representative Edith L. Lutz
Mr. John T. Henley
Mr. V.B. Johnson
Dr. Ben J. Lawrence
Mr. Jack Palmer, Jr.
Senator William G. Hancock, Jr.
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Senator Helen R. Marvin
Senator Aaron W. Plyler
Senator William W. Redman, Jr.
Senator James D. Speed

Senator Marvin Ward
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Representative C. Melvin Creecy
Representative Ray C. Fletcher
Representative C. Malcolm Fulcher
Representative William T. Grimsley
Representative Murray P. Pool
Representative Leroy Spoon, Jr.

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Co-Chairman

Representative R.D. Beard,
Co-Chairman

Senator Lura Tally
Representative Gus N. Economos
Representative C.B. Hauser
Representative John Varner
Mrs. Betty Moore
Mr. Benjamin D. Schwartz
Ms. Malvise A. Scott
Senator James H. Edwards
Senator Rachel Gray
Senator Cecil R. Jenkins, Jr.
Senator David R. Parnell
Senator Robert D. Warren
Senator Russell G. Walker

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Representative Louise S. Brennan
Representative James Crawford, Jr.
Representative C.R. Edwards
Representative Jeanne Fenner
Representative Gordon Greenwood
Representative Margaret Hayden
Representative Margaret Keesee-Forrester
Representative Robie L. Nash
Representative Ray Sparrow
Representative J. Paul Tyndall
Representative Charles Woodard

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1983
RATIFIED BILL

RESOLUTION 21
HOUSE JOINT RESOLUTION 760

A JOINT RESOLUTION DIRECTING THE MENTAL HEALTH STUDY COMMISSION TO EXAMINE FUNDING POLICIES OF AREA MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE PROGRAMS.

Whereas, Article 2F of Chapter 122 establishes area mental health, mental retardation and substance abuse programs as a joint responsibility of local, State and federal government; and

Whereas, federal funds available for allocation to area programs has over the last couple of years decreased; and

Whereas, the State has, since 1973, established different funding mechanisms and different funding categories, some of which require local matching funds; and

Whereas, the relative proportion of local, State and federal funds has shifted over the years and as there is great variation between area programs regarding the funds available to them; and

Whereas, the counties have become increasingly concerned about the yearly requirements for funds for area programs; and

Whereas, the "assurance for continuity of care for persons with mental retardation" as ratified in Chapter 1012, 1981 Session Laws, has drawn particular emphasis to the question of the sharing of fiscal responsibility between local and State government;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The Mental Health Study Commission is directed to study the funding policies of the State for area programs. Such study shall include but not be limited to the relative proportion of local, State and federal funds required for delivery of services; the different types and mechanisms used to fund the area programs; and, particular emphasis shall be placed on the relative fiscal responsibilities under the "continuity of care" provision of the General Statutes.

Sec. 2. The Mental Health Study Commission is authorized to make an interim report to the 1983 General Assembly, Second Session 1984, and a final report to the 1985 General Assembly in January 1985.

Sec. 3. The Mental Health Study Commission shall undertake such study and prepare its report within its assigned fiscal resources and with the cooperation of the Department of Human Resources and area programs and county government.

Sec. 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified, this the 23rd day of May, 1983.

JAMES C. GREEN

James C. Green
President of the Senate

LISTON B. RAMSEY

Liston B. Ramsey
Speaker of the House of Representatives

Appendix C

Continuity of Care statute, G.S. 122-55.8

§ 122-55.8. Assurance for continuity of care for persons with mental retardation.

(a) Any person with mental retardation admitted for residential care or treatment to any 24-hour residential facility, operated under the authority of this Chapter and supported all or in part by State appropriated funds, for other than respite or emergency care shall have the right to residential placement in an alternative facility if the person is in need of placement and if the original facility can no longer provide the care or treatment.

(b) The area mental health, mental retardation and substance abuse authority which serves the county of residence of the person is responsible for the coordination of the placement.

(c) The Department of Human Resources is responsible for coordinative and financial assistance to the area authority in assuring this continuity of care. (1981, c. 1012.)

Appendix D

MENTAL HEALTH STUDY COMMISSION

FUNDING POLICY COMMITTEE

Mini-Hearing Summary
3 February 1984

Jack Williams, Mental Health Association of North Carolina:
- -concern about stability of on-going programs
- -unification of community and institutional systems to avoid unnecessary duplication

Karen Murphy, N. C. Hospital Association:
- -with deinstitutionalization policy it is necessary to appropriate adequate funds to cover the cost of hospital based care in the communities

Judy Batten, President, N. C. Association of Developmental Day Care Directors:
- -advocated for an increase in the subsidy for developmental day care services

Tony Mulvihill, parent of a blind child:
- -requested a change in policy which would allow blind, non-retarded children to be served in developmental day programs

Larry Thompson, President, N. C. Council of Community Mental Health, Mental Retardation and Substance Abuse Programs:
- -suggested that specific services be mandated with a clear match (i.e., 90/10) to cover cost of services
- -funding strategy must move to parity of State dollars
- -categorical dollars should specify disability only
- -utilization of State facilities should be taken into account in funding policies
- -planning for funding should begin at area level and region (area & institution) funding should be focus of coordination

Doris Jeter, Friends and Family of the Mentally Ill
- -funding policies should support both the regional facilities and the area programs rather than setting them up to compete
- -receipts from property sold at institutions (i.e., Dix) should be earmarked for mental health care
- -should save funds from use of Dix buildings by other State agencies
- -geriatric patients in hospitals should be served in nursing home level of care

James Everest, Executive Director, United Cerebral Palsy of N.C.
- -concern about financial support for services for the non-retarded cerebral palsy client

Robert Lorish, Director, Piedmont Area Mental Health Authority
- -unified system for funding with responsibility at the area level
- -specify categorical funding for disability only

Carey Fendley, Executive Director, N.C. Association for Retarded Citizens:

- security for current programs, especially residential and work opportunities
- -eliminate cracks, e.g. young adults aging out of current programs
- -continuity of care is great, but what about security for the families who sacrificed to keep their retarded children at home, who will care for them when the parents die.
- -better coordination between agencies (schools and community colleges) with programming designed to meet students needs could save money
- -concern about conflicting policies, e.g., medicaid waiver to pick up 700 adults rather than ICFMR, yet these clients need places to live too

Helen Hendricks, Friends and Family of the Mentally Ill (letter)

- -funding policies must support both community and institutional services
- -consider raising luxury taxes to support services for the mentally handicapped

Rubye Bryson, Chairperson, Smoky Mountain Area Authority (letter)

- -concern for secure funding comensurate with the needs of the community for services

Robert O. Klepfer, Area Board Member, Guilford Area Authority (letter)

- -concern about the applicability of Continuity of Care to community facilities:
  - -limitation when family refuses to cooperate with treatment or payment
  - -limitation on parental right to accept alternative
  - -area authority responsibility to pay for alternative
  - -problem of client aging out of facility designated for specific age group

John Witherspoon, County Manager, Guilford County

- -endorses Klepfer letter as the position of Guilford County

Appendix E

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1983
RATIFIED BILL

RESOLUTION 50
HOUSE JOINT RESOLUTION 1185

A JOINT RESOLUTION DIRECTING THE MENTAL HEALTH STUDY COMMISSION TO PREPARE A RECODIFICATION DRAFT OF CHAPTER 122 OF THE GENERAL STATUTES, TITLED "HOSPITALS FOR THE MENTALLY DISORDERED", AND OF RELATED STATUTES.

Whereas, the Mental Health Study Commission is composed of legislative and lay members who are knowledgeable about the mental health, mental retardation and substance abuse services system and related laws; and

Whereas, the Mental Health Study Commission has established a regular mechanism for general public and professional input; and

Whereas, over the last 10 years there have been numerous amendments to Chapter 122 of the General Statutes, titled "Hospitals for the Mentally Disordered"; and

Whereas, there remain within Chapter 122 and related statutes antiquated provisions and inconsistent uses of terminology;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section. 1. the Mental Health Study Commisssion is directed to prepare for the 1985 General Assembly a recodification draft of Chapter 122 of the General Statutes, titled "Hospitals for the Mentally Disordered", and related statutes.

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified, this the 20th day of July, 1983.

JAMES C. GREEN

James C. Green
President of the Senate

LISTON B. RAMSEY

Liston B. Ramsey
Speaker of the House of Representatives

Appendix F

RECODIFICATION WORK GROUPS

Division of Mental Health, Mental Retardation and
Substance Abuse Services

ORGANIZATION

R. J. Bickel, Deputy Director for Operations C*
Sandy Moulton, Staff Attorney for Legislation, DHR A*
Steve Hicks, Deputy Director, Alcohol & Drug Services
Pat Webb, Deputy Director for Mental Health Services
Don Taylor, Deputy Director for Mental Retardation Services
Don Willis, Assistant for Regional Operations
Susan White, Assistant Director for Quality Assurance
John Canupp, Director, North Central Region
Helen Cleveland, Area Director, Edgecombe-Nash Area MHMRSA Program
Tom Peters, Director, John Umstead Hospital
Jim Edgerton, Assistant Director for Administration
Les Garner, Director of the Government Executive Institute, UNC-Chapel Hill

CLIENT RIGHTS

Susan White, Assistant Director for Quality Assurance C*
Wilson Hayman, Assistant Attorney General A*
Julie Burton, Chief, Client Information Systems
Celia Fuller, Program Evaluator
Bill League, Program Review Specialist
Roger Manus, Attorney, Carolina Legal Assistance
Sarah Bennett, Medical Records Administrator

JUVENILE ADMISSIONS

Lenor Behar, Ph.D., Chief, Child Mental Health C*
Susan Sabre, Staff Attorney, Legislative Bill Drafting A*
Ed Taylor, Assistant Administrator, Juvenile Services Division
Administrative Office of the Court
Ken Foster, Director of Special Programs, Division of Youth Services
David Hinshaw, Mecklenburg Child Mental Health
Karen Scott, Orange-Person-Chatham Child Mental Health
Harold Frontz, Director, Special Programs, Davidson Area MHMRSA Program
Gary Macbeth, Staff, Child Mental Health Services

SUBSTANCE ABUSE

Steve Hicks, Deputy Director, Alcohol & Drug Services C*
Ben Loeb, Assistant Director, Institute of Government A*
Lady Faircloth, Assistant Director, Alcohol & Drug Services
Lee Walton, Regional Alcohol/Drug Coordinator, Eastern Region
James Melton, Area Director, Gaston-Lincoln Area MHMRSA Program
Judge George Bason, Wake County District Court
Weston Wade, Montgomery County Magistrate
J. W. Hester, Orange-Person-Chatham Area Alcohol & Drug Specialist
Dr. Harriet Harmon, Psychiatrist, Alcoholic Rehabilitation Center, Butner

CONSISTENCY

Angie McMillan, Special Assistant C*
Joan Brannon, Assistant Director, Institute of Government A*
Jackie Stalnaker, Publications Officer (APA/APS Coordinator)
Don Willis (representing Organization Work Group)
Julie Burton (representing Client Rights Work Group)
Gary Macbeth (representing Juvenile Admission Work Group)
Lady Faircloth (representing Substance Abuse Work Group)
Larry Thompson, Area Director, Blue Ridge Area MHMRSA Program

C* - Chairperson of Work Group
A* - Attorney on Work Group

Appendix G

MENTAL HEALTH STUDY COMMISSION

RECODIFICATION COMMITTEE

Mini-Hearing Summary
1 February 1984

Angie McMillan for Mokie Stancil, Chairman, Commission for Mental Health, Mental Retardation and Substance Abuse Services:
- -general support for recodification effort
- -special concern for clarification of confidentiality changes, role of advocacy, and definitions of professionals

[Articles 3 and 1]

Carey Fendley, Governor's Advocacy Council for Persons with Disabilities:
- -informed consent
- -right to refuse medication
- -separation of minors from adults
- -continuity of care for other disabilities
- -client's right to an advocate
- -advocate access to records
- -limitation on client's restriction of rights

[Article 3]

Martha Walston, Council on Developmental Disabilities:
- -expansion of definitions and eligibility for services to all developmental disabilities, not just mentally retarded

[Article 1]

Irma Barbour, Parent of Dix Resident:
- -don't water down hospitals
- -concern about rights to refuse medication
- -concern about sharing of patient information, especially under single portal
- -concern about mixing of patients--aggressive with non-aggressive

[Articles 1 and 3]

Kathryn Hux, Charter Hills Hospital:
- -recommends discontinuance of judicial review of juvenile admission to mental health treatment facility

[Article 5]

Larry Thompson, President, N.C. Council of Community Mental Health, Mental Retardation and Substance Abuse Programs:
- -statutory mandates for required services with specified funding match ratio--other services different match ratio
- -area accountability for clients regardless of location of service

[Article 4 and Funding Policy Committee]

Robert Lorish, Director Piedmont Area Authority:
- -single unified system - mandates for services
- -area accountability for clients regardless of location of service (including management of all resources)

[Article 4 and Funding Policy Committee]

Christine Heinberg, Carolina Legal Assistance for the Mentally Handicapped:

-adoption of SJR 585 as State policy statement
-patient access to medical record
-informed consent
-continuity of care expanded to mentally ill
-restriction of rights limited to 7 days
-do not eliminate juvenile admissions hearing

[Articles 1 and 3 and 5]

JoAnne Jeffries, President, N.C. Society for Autistic Adults and Children:

-inclusion of non-retarded autistic in service delivery system
-expansion of services for non-retarded autistic

[Article 1]

Etherlene Pierce, N.C. Association of Residences for the Retarded:

-organize the chapter along disability lines
-concern about services to retarded in prison system
-concern about rules and regulations as well as statute

[Article 1]

Lisa Berger, President, Spina Bifida Association of Central North Carolina (Letter);

-expansion of system to include all disabilities

[Article 1]

Toni James, Epilepsy Association of North Carolina: (letter)

-expansion of system to include all disabilities
-concern about forced medication

[Articles 1 and 3]

Doris Jeter, Friends and Family of the Mentally Ill(letter):

-specifies three sections of statute which they endorse as is (122-55.6, 122-56.1 and 122-56.3)
-recommends changing and to or in definition of dangerous to self (G. S. 122-58.2)

Dick Bickel, Deputy Director for Operations, Division MHMRSAS:

-planning to develop a draft of the "organization" article for the recodification which more accurately reflects the current operations of the total system of service delivery.

[Article 4]

Susan White, Assisant Director of Quality Assurance, DMHMRSAS

-presented an outline for Article 3--Client's Rights

Steve Hicks, Deputy Director for Substance Abuse Services, DMHMRSAS:

-discussed concept of establishing separate procedures for court ordered care of substance abusers building on previous recommendations of the legislature (i.e., public inebriacy and detox at community level)

[Article 5]

Appendix H

MENTAL HEALTH STUDY COMMISSION

PUBLIC HEARING AGENDA

NOVEMBER 8, 1984 - CHARLOTTE

10:30	Bob Sessums, Board Member Piedmont Area MHMRSA Program	
10:35	Mrs. Marilea Grogan, Member N.C. Council on Developmental Disabilities	
10:40	Roger Manus, Attorney Carolina Legal Assistance	
10:45	Arthur Mandler, Concerned Citizen Asheville	
10:50	John Hardy, Area Director N.C. Council for Community MHMRSA Programs	
10:55	Mrs. Sam Carter, Member Rowan Advocates for the Mentally Ill and N.C. Alliance for the Mentally Ill	
11:00	~~Jane W. Skipper, Concerned Citizen Forest City~~	Mrs. Alice Lutz, Parent Mt. Holly
11:05	Mrs. Pat Lloyd, Board Member Governor's Advocacy Council of Persons with Disabilities	
11:10	Larry King, Client Advocate Broughton Hospital	
11:15	~~Kay Irvin, Client Advocate Western Carolina Center~~	Marsha Walker, Client Advocate Western Carolina Center
11:20	~~Dr. José Hurtado, Chairman Western Carolina Human Rights Committee~~	Dr. Sandy Brenneman Area Dir., Cleveland Co
11:25	Dr. Iverson Riddle, Director Western Carolina Center	
11:30	Doug Mitchell, Chairman Charlotte United Cerebral Palsy Council	
11:35	Mrs. Pat McIntosh, Parent Charlotte	
11:40	Irwin Coffield, Parent Charlotte	

(continued on back)

11:45	Mrs. Donna Wells, Private Therapist Charlotte
11:50	Mrs. Nancy Wiggins, Concerned Citizen Charlotte
11:55	Ed Hinson, Concerned Citizen Charlotte
12:00	Mrs. Anne Laukitis, Director Charlotte United Cerebral Palsy
12:05	Mrs. Kathy Mitchell, Parent Charlotte
12:10	Bernard Clark, Concerned Citizen Charlotte
12:15	Mrs. Jayne Benavides, Concerned Citizen Matthews
12:20	Mrs. Hazel Solomon, Concerned Citizen Charlotte
12:30	LUNCH

AGENDA ADDENDUM

Randy Bettis, Parent
Charlotte

Mrs. Johnnie Sue Dearman, Parent
Charlotte

Mrs. Barbara Childress, Parent
Charlotte

MENTAL HEALTH STUDY COMMISSION

PUBLIC HEARING AGENDA

RALEIGH - NOVEMBER 15, 1984

10:30	Mark Jordan, Concerned Citizen Durham
10:35	Christine Heinberg, Attorney Carolina Legal Assistance
10:40	Everitt Barbee, Clerk of Court Jacksonville
10:45	Nancy S. Miller, Concerned Citizen Raleigh
10:50	Margaret McCreary, Concerned Citizen Durham
10:55	John Witherspoon, County Manager Guilford County
	William Trevorrow, County Attorney Guilford County
11:00	Jim Lovell, President N.C. Association Alcohol Residential Facilities
11:05	Mrs. Peggy Brumitt, Board Member N.C. Mental Health Association
11:10	Wayne Covington, Parent Southport
11:15	Dr. Bryant Welch, Policy Director N.C. Psychological Association
11:20	Lueta Sellers, Member N.C. Governor's Advocacy Council for Persons with Disabilities
11:25	Larry Jones, Advocate Broughton Hospital
11:30	Gary Fisher Epilepsy Association of N.C.
11:35	Al Singer, President Community Living Association
11:40	Dr. Beverly Sanders, Director of M.R. Services Alamance/Caswell Area MHMRSA Program
11:45	Elaine Purple, President N.C. Alliance for the Mentally Ill
11:50	Janet Barwick, President Concerned Citizens for the Rights of Handicapped Children
11:55	Joan Broadway, Concerned Citizen Lenoir
12:00	Linda Miller, Chairman Dix Human Rights Committee
12:05	Ann Sawyer, Counsel N.C. Medical Society
12:10	Allen Briggs, Counsel N.C. Academy of Trial Lawyers

(Continued On Back)

12:15	Rev. Dennis Goodwin, Member Caswell Human Rights Committee
12:20	Pat O'Herra, President Caswell Center Parents Group
12:25	Beecher White, Concerned Citizen Raleigh
12:30	LUNCH
1:30	Cheryl Wehling, Concerned Citizen Raleigh
1:35	Dr. Ric Zaharia, Director Caswell Center
1:40	Patricia Jennings, Member Murdoch Human Rights Committee
1:45	Randall Rush, Advocate Murdoch Center
1:50	Chuck Eppinette, Concerned Citizen Raleigh
1:55	Dr. Peter Breggin Private Physician and Author Bethesda, Maryland
2:00	John Orcutt, Associate Attorney General N.C. Memorial Hospital
2:05	Helen Hendricks, Concerned Citizen Raleigh
2:10	Mary Lou Warren, Member N.C. Council of Developmental Disabilities
2:15	Susan Harrington, Director Respite Care of Wake County
2:20	Millard F. Church, Concerned Citizen Raleigh
2:25	Jeanne Allf, Program Director Respite Care of Orange County
2:30	Bill O'Connell, Associate Attorney General Raleigh
2:35	Ron Aycock, Executive Director N.C. Association of County Commissioners
2:40	Barbara Muse REACH Family Group in Winston-Salem
2:45	Debra Wood, Parent Matthews
2:50	Joanne Jeffries, President N.C. Society for Autistic Children and Adults
2:55	Wyatt Buckingham, Parent Raleigh
3:00	Evans Taylor, Parent Raleigh
3:05	Mary Ann Kelley, Parent Wake Forest

(Continued)

3:10	Jim Everest, Executive Director United Cerebral Palsy - North Carolina
3:15	Rosanne Hutter, Member John Umstead Hospital Human Rights Committee
3:20	Dr. A. Eugene Douglas, Director Division of Mental Health, Mental Retardation and Substance Abuse Services
3:25	Mokie Stancil, Chairman Commission for Mental Health, Mental Retardation and Substance Abuse Services
3:30	Adjourn

Appendix I
Legislative Proposal #1

85N16-LB-7A

Public

ST: Mental Health Study

A BILL TO BE ENTITLED

AN ACT TO EXTEND AND RESTRUCTURE THE MENTAL HEALTH STUDY COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Resolution 80, Session Laws of 1973, as amended by Chapter 806, Session Laws of 1973 and Section 2 of Chapter 184, Session Laws of 1977, is rewritten to read:

"Sec. 2. Appointment of Members. The Commission shall consist of 24 members. The Speaker of the House shall appoint eight members at least six of whom at the time of their appointment are members of the House, and one of those six shall be Chairman of the Mental Health Committee of the House of Representatives. The President of the Senate shall appoint eight members at least six of whom at the time of their appointment are members of the Senate, and one of those six shall be Chairman of the Senate Human Resources Committee. The Governor shall appoint eight members, two of whom at the time of their appointment shall be county commissioners taken from a list of four candidates nominated by the North Carolina Association of County Commissioners. If that Association fails to make nominations by September 1, 1985, the Governor may appoint any two county commissioners."

Sec. 2. Section 4 of Resolution 80, Session Laws of 1983, is amended by deleting "and ex officio members" all three times those words appear.

Sec. 3. The Mental Health Study Commission, established and structured by 1973 General Assembly Resolution 80; Chapter 806, 1973 Session Laws; Chapter 185, 1975 Session Laws; Chapter 184, 1977 Session Laws; Chapter 285, 1979 Session Laws; 1979 General Assembly Resolution 20; Chapter 49, 1981 Session Laws, and Chapter 268, Session Laws of 1983, as amended by Section 1 of this act, is revived and authorized to continue in existence until July 1, 1987.

Sec. 4. The continued Mental Health Study Commission shall have all the powers and duties of the original Study Commission as they are necessary to continue the original study, to assist in the implementation of the original and succeeding Study Commission recommendations and to plan further activity on the subject of the study.

Sec. 5. Members and staff of the continued Mental Health Study Commission shall receive compensation and expenses as under the original authorization in the 1973 General Assembly Resolution 80. Expenses of the Commission shall be expended by the Department of Human Resources from Budget Code 14460 subhead 1110.

Sec. 6. In addition to other studies authorized by law, the Mental Health Study Commission shall study:

(1) the funding of area authorities; and

(2) child mental health services, including the juvenile admissions law.

The Mental Health Study Commission shall report to the 1987 General Assembly and may also report to the 1985 General Assembly, Second Session 1986.

Sec. 7. This act is effective upon ratification.

NOTE: The membership of the Commission is recommended to be changed in order to maintain the work of the Commission within the original appropriation. By deleting the regular reimbursed participation of ex-officio members and increasing the appointed membership to maintain legislative involvement, the Commission will be able to carry out its duties within its continuation budget.

APPENDIX I

LEGISLATIVE PROPOSAL #2

85W6-LF-38

Public

S.T.: M. R. Continuity of Care

A BILL TO BE ENTITLED

AN ACT TO ASSURE CONTINUITY OF CARE FOR INDIVIDUALS WITH MENTAL RETARDATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 122-55.8 is rewritten to read:

"§ 122-55.8. Assurance for continuity of care for individuals with mental retardation.--(a) Any individual with mental retardation admitted for residential care or treatment for other than respite or emergency care to any 24-hour facility operated under the authority of this Chapter and supported all or in part by State appropriated funds has the right to residential placement in an alternative facility if the client is in need of placement and if the original facility can no longer provide the necessary care or treatment.

(b) The operator of a 24-hour facility providing residential care or treatment, for other than respite or emergency care, for individuals with mental retardation shall notify the area authority serving the client's county of residence of his intent to close a facility or to discharge a client who may be in need of continuing care at least 60 days prior to the closing or discharge.

The operator's notification to the area authority of intent to close a facility or to discharge a client who may be in need of continuing care constitutes the operator's acknowledgement of the obligation to continue to serve the client until:

(1) The area authority determines that the client is not in need of continuing care;

(2) The client is moved to an alternative residential placement; or

(3) 60 days have elapsed;

whichever occurs first.

In cases in which the safety of the client who may be in need of continuing care, of other clients, of the staff of the 24-hour facility, or of the general public, is concerned, this 60-day notification period may be waived by securing an emergency placement in a more secure and safe facility. The operator of the 24-hour facility shall notify the area authority that an emergency placement has been arranged within 24 hours of the placement. The area authority and the Secretary shall retain their respective responsibilities upon receipt of this notice.

(c) An individual who may be in need of continuing care may be discharged from a 24-hour facility without further claim for continuing care against the area authority or the State if:

(1) After the parent or guardian, if the client is a minor or an adjudicated incompetent adult, or the client, if an adult not adjudicated incompetent, has entered into a contract with the operator upon the client's admission to the original residential care or treatment

facility, the parent, guardian, or client who entered into the contract refuses to carry out the contract, or

(2) After an alternative placement for a client in need of continuing care is located, the parent or guardian who admitted the client to the 24-hour facility, if the client is a minor or an adjudicated incompetent adult, or the client if an adult not adjudicated incompetent, refuses the alternative placement.

(d) Decisions made by the area authority regarding the need for continued placement or regarding the availability of an alternative placement of a client may be appealed pursuant to the appeals process of the area authority and subsequently to the Secretary or the Commission under their rules. If the appeal process extends beyond the operator's 60-day obligation to continue to serve the client, the Secretary shall arrange a temporary placement in a State facility for the mentally retarded pending the outcome of the appeal.

(e) The area authority that serves the county of residence of the client is responsible for assessing the need for continuity of care and for the coordination of the placement among available public and private facilities whenever the authority is notified that a client may be in need of continuing care. If an alternative placement is not available beyond the operator's 60-day obligation to continue to serve the client, the Secretary shall arrange for a temporary placement in a State facility for the mentally retarded. The area authority shall retain

responsibility for coordination of placement during a temporary placement in a State facility.

(f) The Secretary is responsible for coordinative and financial assistance to the area authority in the performing of its duties and for assuring a continuity of care placement beyond the operator's 60-day obligation period.

(g) The area authority's financial responsibility, through local and allocated State resources, is limited to:

(1) Costs relating to the identification and coordination of alternative placements;

(2) If the original facility is an area facility, maintenance of the client in the original facility for up to 60 days; and

(3) Release of allocated categorical State funds used to support the care or treatment of the specific client at the time of alternative placement if the Secretary requires the release.

(h) In accordance with G.S. 143B-147(a)(1) the Commission shall develop programmatic rules to implement this section, and, in accordance with Part 3 of Article 2F of Chapter 122 of the General Statutes, the Secretary shall adopt budgetary rules to implement this section.

(i) As used in this section, unless another meaning is specified or the context clearly requires otherwise, the following terms have the meanings specified:

(1) 'Area authority' means the area mental health, mental retardation, and substance abuse authority.

(2) 'Client' means an individual who is admitted to and receiving service from, or who in the past had been admitted to and received services from, a facility.

(3) 'Commission' has the same meaning as in G.S.122-23.2(2).

(4) 'Department' means the North Carolina Department of Human Resources.

(5) 'Facility' has the same meaning as in G.S.122-23.2(4).

(6) 'Incompetent adult' means an individual adjudicated incompetent.

(7) 'Operator' has the same meaning as in G.S.122-23.2(5).

(8) 'Person' has the same meaning as in G.S.122-23.2(6).

(9) 'Secretary' means the Secretary of the Department.

(10) 'State facility' means a facility that is operated by the Secretary.

(11) 'Twenty-four hour facility' means a facility that provides a structured living environment and supervised care, treatment, habilitation, or rehabilitation for a period of 24 consecutive hours or more and includes hospitals that are facilities."

Sec. 2. G.S. 122C-63 is rewritten to read:

"§ 122C-63. Assurance for continuity of care for individuals with mental retardation.--(a) Any individual with mental retardation admitted for residential care or treatment for other than respite or emergency care to any 24-hour facility operated under the authority of this Chapter and supported all or in part by State appropriated funds has the right to residential

placement in an alternative facility if the client is in need of placement and if the original facility can no longer provide the necessary care or treatment.

(b) The operator of a 24-hour facility providing residential care or treatment, for other than respite or emergency care, for individuals with mental retardation shall notify the area authority serving the client's county of residence of his intent to close a facility or to discharge a client who may be in need of continuing care at least 60 days prior to the closing or discharge.

The operator's notification to the area authority of intent to close a facility or to discharge a client who may be in need of continuing care constitutes the operator's acknowledgement of the obligation to continue to serve the client until:

(1) The area authority determines that the client is not in need of continuing care;

(2) The client is moved to an alternative residential placement; or

(3) 60 days have elapsed;

whichever occurs first.

In cases in which the safety of the client who may be in need of continuing care, of other clients, of the staff of the 24-hour facility, or of the general public, is concerned, this 60-day notification period may be waived by securing an emergency placement in a more secure and safe facility. The operator of the 24-hour facility shall notify the area authority that an emergency placement has been arranged within 24 hours of the

placement. The area authority and the Secretary shall retain their respective responsibilities upon receipt of this notice.

(c) An individual who may be in need of continuing care may be discharged from a 24-hour facility without further claim for continuing care against the area authority or the State if:

(1) After the parent or guardian, if the client is a minor or an adjudicated incompetent adult, or the client, if an adult not adjudicated incompetent, has entered into a contract with the operator upon the client's admission to the original 24-hour facility the parent, guardian, or client who entered into the contract refuses to carry out the contract, or

(2) After an alternative placement for a client in need of continuing care is located, the parent or guardian who admitted the client to the 24-hour facility, if the client is a minor or an adjudicated incompetent adult, or the client if an adult not adjudicated incompetent, refuses the alternative placement.

(d) Decisions made by the area authority regarding the need for continued placement or regarding the availability of an alternative placement of a client may be appealed pursuant to the appeals process of the area authority and subsequently to the Secretary or the Commission under their rules. If the appeal process extends beyond the operator's 60-day obligation to continue to serve the client, the Secretary shall arrange a temporary placement in a State facility for the mentally retarded pending the outcome of the appeal.

(e) The area authority that serves the county of residence of the client is responsible for assessing the need for continuity of care and for the coordination of the placement among available public and private facilities whenever the authority is notified that a client may be in need of continuing care. If an alternative placement is not available beyond the operator's 60-day obligation to continue to serve the client, the Secretary shall arrange for a temporary placement in a State facility for the mentally retarded. The area authority shall retain responsibility for coordination of placement during a temporary placement in a State facility.

(f) The Secretary is responsible for coordinative and financial assistance to the area authority in the performing of its duties to coordinate placement so as to assure continuity of care and for assuring a continuity of care placement beyond the operator's 60-day obligation period.

(g) The area authority's financial responsibility, through local and allocated State resources, is limited to:

(1) Costs relating to the identification and coordination of alternative placements;

(2) If the original facility is an area facility, maintenance of the client in the original facility for up to 60 days; and

(3) Release of allocated categorical State funds used to support the care or treatment of the specific client at the time of alternative placement if the Secretary requires the release.

(h) In accordance with G.S. 143B-147(a)(1) the Commission shall develop programmatic rules to implement this section, and, in accordance with G.S. 122C-112(a)(6), the Secretary shall adopt budgetary rules to implement this section."

Sec. 3. Section 1 of this act shall become effective July 1, 1985, and Section 2 of this act shall become effective January 1, 1986.

A BILL TO BE ENTITLED

AN ACT TO RECODIFY THE MENTAL HEALTH, MENTAL RETARDATION, AND SUBSTANCE ABUSE LAWS OF NORTH CAROLINA.

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'Part 3. Voluntary Admissions and Discharges, Minors, Facilities for the Mentally Ill and Substance Abusers.

'Part 4. Voluntary Admissions and Discharges, Incompetent Adults, Facilities for the Mentally Ill and Substance Abusers

'Part 5. Voluntary Admissions and Discharges, Minors and Adults, Facilities For Individuals with Mental Retardation.

'Part 6. Involuntary Commitment - General Provisions.

'Part 7. Involuntary Commitment of the Mentally Ill and the Mentally Retarded with Behavior Disorders, Facilities for the Mentally Ill.

'Part 8. Involuntary Commitment of Substance Abusers, Facilities for Substance Abusers.

'Part 2. Black Mountain Joint Security Force.

'Part 3. North Carolina Alcoholism Research Authority.

EXPLANATION OF ABBREVIATIONS IN MARGINAL NOTES:
CCP = Codification of current policy
CONS = Made consistent with other laws or other provisions within this act.
S.C. = Substantive change
MARGINAL NOTE INDICATES SOURCE OF LANGUAGE

The General Assembly of North Carolina enacts:

Notes

Section 1. Chapter 122 of the General Statutes is repealed.

Sec. 2. The General Statutes are amended by adding a new Chapter to read:

"Chapter 122C.
'Mental Health, Mental Retardation, and Substance Abuse Act of 1985

'Article 1.
'General Provisions.

'§122C-1. Short title.-- This Chapter may be cited as the Mental Health, Mental Retardation, and Substance Abuse Act of 1985. NEW

'§122C-2. Policy.-- The policy of the State is to assist individuals with mental illness, mental retardation, and substance abuse problems in ways consistent with the dignity, rights, and responsibilities of all North Carolina citizens. Within available resources it is the obligation of State and local government to provide services to eliminate, reduce, or prevent the disabling effects of mental illness, mental retardation, and substance abuse through a service delivery system designed to meet the needs of clients in the least restrictive available setting, if the least restrictive setting is therapeutically G.S.122-35.35 and -55.1.

most appropriate, and maximize their quality of life.

State and local governments shall develop and maintain a unified system of services centered in area programs. The public service system will strive to provide a continuum of services for clients while considering the availability of services in the private sector. — CCP Added ref to private sector

The furnishing of services to implement the policy of this section requires the cooperation and financial assistance of counties, the State, and the federal government.

'§122C-3. Definitions.-- As used in this Chapter, unless another meaning is specified or the context clearly requires otherwise, the following terms have the meanings specified:

(1) 'Area authority' means the area mental health, mental retardation, and substance abuse authority. — G.S. 122-35.36 G.S. 122-23.2(1)

(2) 'Area board' means the area mental health, mental retardation, and substance abuse board. — G.S. 122-35.36(2)

(3) 'Area facility' means a facility that is operated by or under contract with the area authority. A facility that is providing services under contract with the area authority is an area facility for purposes of the contracted services only. Area facilities may also be licensable facilities in accordance with Article 2 of this Chapter. A state facility is not an area facility. — G.S. 122-35.36(3) CCP ref. to facility for contract only

(4) 'Camp Butner reservation' means the original Camp Butner reservation as may be designated by the Department as having been acquired by the State and includes not only areas which are owned and occupied by the State but also those which may have been leased or otherwise disposed of by the State. — G.S.122-95

(5) 'City' has the same meaning as in G.S. 153A-1(1). — CONS

(6) 'Catchment area' means the geographic part of the State served by a specific area authority. — G.S. 122-35.36(4)

(7) 'Client' means an individual who is admitted to and receiving service from, or who in the past had been admitted to and received services from, a facility. — CCP

(8) 'Client advocate' means a person whose role is to monitor the protection of client rights or to act as an individual advocate on behalf of a particular client in a facility. — CCP

(9) 'Client identifying information' means any confidential information from which the identity of an individual served by a facility can be determined either directly or by reference to publicly known or available information. — CCP

(10) 'Commission' means the Commission for Mental Health, Mental Retardation, and Substance Abuse Services, established under Part 4 of Article 3 of Chapter 143B of the General Statutes. — G.S. 122-1.1A G.S.122-23.2(2)

(11) 'Confidential information' means any information, whether recorded or not, relating to an individual served by a facility that was received in connection with the performance of any function of the facility. 'Confidential information' does not include statistical information from reports and records or information regarding treatment or services which is shared for training, treatment, habilitation, or monitoring purposes that does not include client identifying information. — CCP

(12) 'County of Residence' of a client means the county of his domicile at the time of his admission or commitment to a facility. A county of residence is not changed because an individual is temporarily out of his county in a facility or otherwise. — G.S. 122-36(a)

(13) 'Dangerous to himself or others' means: — G.S. 122-58.2(1)

a. 'Dangerous to himself' means that within the recent past:

1. The individual has acted in such a way as to show: — SC#1 Added ability to use previous episodes as evidence and destruction of property as dangerous to others

I. That he would be unable, without care, supervision, and the continued assistance of others not otherwise available, to exercise self-control, judgment, and discretion in the conduct of his daily responsibilities and social relations, or to satisfy his need for nourishment, personal or medical care, shelter, or self-protection and safety; and

II. That there is a reasonable probability of his suffering serious physical debilitation within the near future unless adequate treatment is

given pursuant to this Chapter. A showing of behavior that is grossly irrational, of actions that the individual is unable to control, of behavior that is grossly inappropriate to the situation, or of other evidence of severely impaired insight and judgment shall create a prima facie inference that the individual is unable to care for himself; or

2. The individual has attempted suicide or threatened suicide and that there is a reasonable probability of suicide unless adequate treatment is given pursuant to this Chapter; or
3. The individual has mutilated himself or attempted to mutilate himself and that there is a reasonable probability of serious self-mutilation unless adequate treatment is given pursuant to this Chapter.

Previous episodes of dangerousness to self, when applicable, may be considered when determining reasonable probability of physical debilitation, suicide, or self-mutilation.

b. 'Dangerous to others' means that within the recent past, the individual has inflicted or attempted to inflict or threatened to inflict serious bodily harm on another, or has acted in such a way as to create a substantial risk of serious bodily harm to another, or has engaged in extreme destruction of property; and that there is a reasonable probability that this conduct will be repeated. Previous episodes of dangerousness to others, when applicable, may be considered when determining reasonable probability of future dangerous conduct.

(14) 'Department' means the North Carolina Department of Human Resources. — G.S. 122-35.36(6),

(15) 'Division' means the Division of Mental Health, Mental Retardation and Substance Abuse Services of the Department. — CCP

(16) 'Facility' means any person at one location whose primary purpose is to provide services for the care, treatment, habilitation, or rehabilitation of the mentally ill, the mentally retarded, or substance abusers and is an area, State or licensable facility, a special unit at a general hospital, or a Veterans Administation facility. 'Facility' also means the psychiatric service of North Carolina Memorial Hospital. — G.S.122-36(g) G.S.122-58.2(7)

(17)	'Guardian' means a person appointed as a guardian of the person or general guardian by the court under Chapters 7A, 33, or 35 of the General Statutes.	G.S.122-36(n) deleted common law guardian
(18)	'Habilitation' means training, care, and specialized therapies undertaken to assist a client in maintaining his current level of functioning or in achieving progress in developmental skills areas.	G.S. 122-36(k) deleted ref. to education
(19)	'Incompetent adult' means an individual adjudicated incompetent.	CCP
(20)	'Intoxicated' means the condition of an individual whose mental or physical functioning is presently substantially impaired as a result of the use of alcohol or other substance.	G.S.122-65.10(1)
(21)	'Law-enforcement officer' means sheriff, deputy sheriff, police officer, State highway patrolman, or an officer employed by a city or county under G.S. 122C-302.	G.S. 122-58.2 G.S. 122-65.10
(22)	'Legally responsible person' means: (i) when applied to an adult, an attorney-in-fact acting under a valid power of attorney that authorizes him to provide or consent to medical care and hospitalization for the principal; (ii) when applied to an adult who has been adjudicated incompetent, a guardian, or an attorney-in-fact acting under a valid durable power of attorney that authorizes him to provide or consent to medical care and hospitalization for the principal; or (iii) when applied to a minor, a parent, guardian, a person standing in loco parentis, or a legal custodian who has been granted specific authority in a custody order to consent for medical care, including psychiatric treatment.	CONS
(23)	'Licensable facility' means a facility that provides services for one or more minors or for two or more adults. When the services offered are provided to individuals who are mentally ill or mentally retarded, these services shall be day services offered to the same individual for a period of three hours or more during a 24-hour period, or residential services provided for 24 consecutive hours or more. When the services offered are provided to individuals who are substance abusers, these services shall include all outpatient services, day services offered to the same individual for a period of three hours or more during a 24-hour period, or residential services provided for 24	G.S. 122-23.2(4) as modified by Ch.1110, SL1983

consecutive hours or more. Facilities for individuals who are substance abusers include chemical dependency facilities.

(24) 'Mental illness' means: (i) when applied to an adult, an illness which so lessens the capacity of the individual to use self-control, judgment, and discretion in the conduct of his affairs and social relations as to make it necessary or advisable for him to be under treatment, care, supervision, guidance, or control; and (ii) when applied to a minor, a mental condition, other than mental retardation alone, that so lessens or impairs the youth's capacity either to develop or exercise age appropriate or age adequate self-control, judgment, or initiative in the conduct of his activities and social relationships as to make it necessary or advisable for him to be under treatment, care, supervision, guidance, or control. — G.S.122-36(d)

(25) 'Mental retardation' means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before age 18. — G.S.122-36(e) changed "within devlop period" to "before 18"

(26) 'Mentally retarded with accompanying behavior disorder' means an individual who is mentally retarded and who has a pattern of maladaptive behavior that is recognizable no later than adolescence and is characterized by gross outbursts of rage or physical aggression against other individuals or property. — G.S. 122-58.2(4)

(27) 'Next of kin' means the individual designated in writing by the client or his legally responsible person upon the client's acceptance at a facility; provided that if no such designation has been made, 'next of kin' means the client's spouse or nearest blood relation in accordance with G.S. 104A-1. — G.S.122-36(o)

(28) 'Operating costs' means expenditures made by an area authority in the delivery of services for mental health, mental retardation, and substance abuse as provided in this Chapter and includes the employment of legal counsel on a temporary basis to represent the interests of the area authority. — G.S. 122-35.36

(29) 'Operator' means the individual who is responsible for the management of a licensable facility. — G.S.122-23.2(5)

(30) 'Outpatient treatment' as used in Part 7 of Article 5 means treatment in an outpatient setting and may include — G.S.122-58.2(8)

medication, individual or group therapy, day or partial day programming activities, services and training including educational and vocational activities, supervision of living arrangements, and any other services prescribed either to alleviate the individual's illness or disability, to maintain semi-independent functioning, or to prevent further deterioration that may reasonably be predicted to result in the need for inpatient commitment to a 24-hour facility.

(31) 'Person' means any individual, firm, partnership, corporation, company, association, joint stock association, agency, or area authority. G.S.122-23.2(6)

(32) 'Physician' means an individual licensed to practice medicine in North Carolina under Chapter 90 of the General Statutes or a licensed medical doctor employed by the Veterans Administration. G.S.122-35.36(7) Added V.A.

(33) 'Provider of support services' means a person that provides to a facility support services such as data processing, dosage preparation, laboratory analyses, or legal, medical, accounting, or other professional services, including human services. CCP

(34) 'Qualified professional' means any individual with appropriate training or experience as specified by the General Statutes or by rule of the Commission in the fields of mental health or mental retardation or substance abuse treatment or habilitation, including physicians, psychologists, psychological associates, educators, social workers, registered nurses, and certified counselors. G.S.122-35.36(11)

(35) 'Residential facility' means a 24-hour facility in a non-hospital setting, including group homes. CCP

(36) 'Responsible professional' means an individual within a facility who is designated by the facility director to be responsible for the care, treatment, habilitation, or rehabilitation of a specific client and who is eligible to provide care, treatment, habilitation, or rehabilitation relative to the client's disability. CCP

(37) 'Secretary' means the Secretary of the Department. G.S.122-23.2(8)

(38) 'Single portal of entry and exit policy' means an admission G.S.122-35.36(13)

and discharge policy for State and area facilities that may be adopted by an area authority and shall be approved by the Secretary before it is in force. The policy and its provisions. shall be designed to promote quality client care in and among State and area facilities. Furthermore, the policy shall be designed to integrate otherwise independent facilities into a unified and coordinated system, in which system the area authority shall be responsible for assuring that the individual client can receive services from the facility that is best able to meet his needs. However, the policy may not be inconsistent with any other provisions of the General Statutes, nor may the policy include the complete exclusion of clients from admission to any specific State or area facility.

(39) 'Single portal area' means the county or counties that comprise the catchment area of an area authority that has adopted a single portal of entry and exit policy. G.S.122-35.36(4)

(40) 'State facility' means a facility that is operated by the Secretary. CCP

(41) 'Substance abuse' means the pathological use or abuse of alcohol or other drugs in a way or to a degree that produces an impairment in personal, social, or occupational functioning. 'Substance abuse' may include a pattern of tolerance and withdrawal. G.S.122-35.36(12)

(42) 'Substance abuser' means an individual who engages in substance abuse. CCP

(43) 'Twenty-four hour facility' means a facility that provides a structured living environment and supervised care, treatment, habilitation, or rehabilitation for a period of 24 consecutive hours or more and includes hospitals that are facilities under this Chapter. CCP

'§122C-4. Use of phrase 'client or his legally responsible person'.-- Except as otherwise provided by law, whenever in this Chapter the phrase 'client or his legally responsible person' is used, and the client is a minor or an adult who has been adjudicated incompetent, the duty or right involved shall be exercised not by the client, but by the legally responsible person. CCP

'Article 2.
'Licensure of Facilities for the Mentally Ill, the Mentally Retarded, and Substance Abusers.

'§122C-21. Purpose.-- The purpose of this Article is to provide for licensure of facilities for the mentally ill, mentally retarded, and substance abusers by the development, establishment, and enforcement of basic rules governing: G.S. 122-23.1

(1) The provision of services to individuals who receive services from licensable facilities as defined by this Chapter, and
(2) The construction, maintenance, and operation of these licensable facilities that in the light of existing knowledge will ensure safe and adequate treatment of these individuals.

'§122C-22. Exclusions from licensure; deemed status.--(a) The following are excluded from the provisions of this Article and are not required to get licensure under this Article: G.S. 122-23.3, as modified by Ch.1110 SL1983

(1) Physicians and psychologists duly licensed under Chapter 90 of the General Statutes and engaged in private office practice;
(2) General hospitals licensed under Article 5 of Chapter 131E of the General Statutes, that operate special units for the mentally ill, mentally retarded, or substance abusers;
(3) State and federally operated facilities;
(4) Domiciliary care homes licensed under Chapter 131D of the General Statutes;
(5) Developmental child day-care centers licensed under Article 7 of Chapter 110 of the General Statutes;
(6) Persons subject to licensure under rules of the Social Services Commission; and
(7) Persons subject to rules and regulations of the Division of Vocational Rehabilitation Services.
(8) Facilities that provide occasional respite care for not more than two individuals at a time; provided that the primary purpose of the facility is other than as defined in G.S.122C-3(16). SC#2 added exception for respite care

(b) If a licensable facility is certified by a nationally recognized agency, such as the Joint Commission on Accreditation of Hospitals, then the Commission may by rule deem the facility licensed under this Article. Any facility licensed under the provisions of this subsection shall continue to be subject to inspection by the Secretary.

'§122C-23. Licensure.--(a) No person shall establish, maintain, or operate a licensable facility for the mentally ill, mentally retarded, G.S. 122-23.4 G.S. 122-72

or substance abusers without a current license issued by the Secretary.

(b) Each license is issued only for the premises named in the application and for the operator named in the application and shall not be transferable or assignable except with prior written approval of the Secretary.

(c) Any person who intends to establish, maintain, or operate a licensable facility shall apply to the Department for a license. The Secretary shall prescribe by rule the contents of the application forms.

(d) The Department shall issue a license if it finds that the operator complies with this Article and the rules of the Commission and Secretary.

(e) Unless a license is provisional or has been suspended or revoked, it shall be valid for a period not to exceed two years from the date of issue. The expiration date of a license shall be specified on the license when issued. Renewal of a regular license is contingent upon receipt of information required by the Secretary for renewal and continued compliance with this Article and the rules of the Commission and the Secretary.

A provisional license for a period not to exceed six months may be granted by the Secretary to a person who is temporarily unable to comply with a rule or rules. During this period the licensable facility shall correct the noncompliance based on a plan submitted to and approved by the Secretary. The noncompliance may not present an immediate threat to the health and safety of the individuals in the licensable facility. A provisional license for an additional period of time to meet the noncompliance may not be issued.

(f) Upon written application and in accordance with rules of the Commission, the Secretary may for good cause waive any of the rules implementing this Article, provided those rules do not affect the health, safety, or welfare of the individuals within the licensable facility. Decisions made pursuant to this subsection may be appealed to the Commission for a hearing in accordance with Chapter 150A of the General Statutes.

'§122C-24. Adverse action on a license.--(a) The Department may deny, suspend, amend, or revoke a license in any case in which it finds that there has been a substantial failure to comply with any provision of this Article or any rule adopted pursuant to it. Actions under this section and appeals of those actions shall be in accordance with rules of the Commission and Chapter 150A of the General Statutes. G.S. 122-23.5

(b) When an appeal is filed concerning the denial, suspension, amendment, or revocation of a license, a copy of the proposal for decision shall be sent to the chairman of the Commission in addition to the parties specified in G.S. 150A-34. The Chairman or members of the Commission

designated by the Chairman may submit for the Secretary's consideration written or oral comments concerning the proposal prior to the issuance of a final agency decision in accordance with G.S. 150A-36.

'§122C-25. Inspections; confidentiality.--(a) The Secretary shall make or cause to be made inspections that the Secretary considers necessary. Facilities licensed under this Article shall be subject to inspection at all times by the Secretary. G.S. 122-23.6

(b) Notwithstanding G.S. 8-53, G.S. 8-53.3 or any other law relating to confidentiality of communications involving a patient or client, in the course of an inspection conducted under this section, Department representatives may review any writing or other record concerning the admission, discharge, medication, treatment, medical condition, or history of any individual who is or has been a patient, resident, or client of a licensable facility and the personnel records of those individuals employed by the licensable facility.

A licensable facility, its employees, and any other individual interviewed in the course of an inspection are immune from liability for damages resulting from disclosure of any information to the Secretary.

Except as required by law, it is unlawful for the Secretary or an employee of the Department to disclose the following information to someone not authorized to receive the information:

(1) Any confidential or privileged information obtained under this section unless the client or his legally responsible person authorizes disclosure in writing; or

(2) The name of anyone who has furnished information concerning a licensable facility without the individual's consent.

Violation of this subsection is a misdemeanor punishable by a fine, not to exceed five hundred dollars ($500.00).

All confidential or privileged information obtained under this section and the names of persons providing this information are exempt from Chapter 132 of the General Statutes.

(c) The Secretary shall adopt rules regarding inspections, that, at a minimum, provide for:

(1) A general administrative schedule for inspections; and

(2) An unscheduled inspection without notice, if there is a complaint alleging the violation of any licensing rule adopted under this Article.

'§122C-26. Powers of the Commission.--In addition to other powers and duties, the Commission shall exercise the following powers and duties: G.S. 122-23.7

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(1) Adopt, amend, and repeal rules consistent with the laws of this State and the laws and regulations of the federal government to implement the provisions and purposes of this Article;
(2) Issue declaratory rulings needed to implement the provisions and purposes of this Article;
(3) Adopt rules governing appeals of decisions to approve or deny licensure under this Article; and
(4) Adopt rules for the waiver of rules adopted under this Article.

'§122C-27. Powers of the Secretary.--The Secretary shall: G.S. 122-23.8
(1) Administer and enforce the provisions, rules, and decisions pursuant to this Article;
(2) Appoint hearing officers to conduct appeals under this Article;
(3) Prescribe by rule the contents of the application for licensure and renewal;
(4) Inspect facilities and records of each facility to be licensed under this Article under the rules and decisions pursuant to this Article;
(5) Issue a license upon a finding that the applicant and facility comply with the provisions of this Article and the rules of the Commission and the Secretary;
(6) Define by rule procedures for submission of periodic reports by facilities licensed under this Article;
(7) Grant, deny, suspend, or revoke a license under this Article;
(8) In accordance with rules of the Commission, make final agency decisions for appeals from the denial, suspension, or revocation of a license in accordance with G.S. 122C-24; and
(9) In accordance with rules of the Commission, grant waiver for good cause of any rules implementing this Article that do not affect the health, safety, or welfare of individuals within a licensable facility.

'§122C-28. Penalties.--Operating a licensable facility without a G.S.122-23.9
license is a misdemeanor and is punishable by a fine not to exceed fifty dollars ($50.00), for the first offense and a fine, not to exceed five hundred dollars ($500.00), for each subsequent offense. Each day's operation of a licensable facility without a license is a separate offense.

'§122C-29. Injunction.--(a) Notwithstanding the existence or G.S. 122-23.10
pursuit of any other remedy, the Secretary may, in the way provided

by law, maintain an action in the name of the State for injunction or other process against any person to restrain or prevent the establishment, conduct, management, or operation of a licensable facility operating without a license or in a way that threatens the health, safety, or welfare of the individuals in the licensable facility.

(b) If any individual interferes with the proper performance or duty of the Secretary in carrying out this Article, the Secretary may institute an action in the superior court of the county in which the interference occurred for injunctive relief against the continued interference, irrespective of all other remedies at law.

'Article 3.
'Clients' Rights.

'§122C-51. Declaration of policy on clients' rights.--It is the policy of the State to assure basic human rights to each client of a facility. These rights include the right to dignity, privacy, humane care, and freedom from mental and physical abuse, neglect, and exploitation. Each facility shall assure to each client the right to live as normally as possible while receiving care and treatment.

It is further the policy of this State that each client who is admitted to and is receiving services from a facility has the right to treatment, including access to medical care and habilitation, regardless of age or degree of mental illness, mental retardation, or substance abuse. Each client has the right to an individualized written treatment or habilitation plan setting forth a program to maximize the development or restoration of his capabilities.

G.S.122-55.1 CONS Added right to be free of mental and physical abuse, neglect, and exploitation
G.S.122-55.5
G.S.122-55.13

'§122C-52. Right to confidentiality.--(a) Confidential information acquired in attending or treating a client is not a public record under Chapter 132 of the General Statutes.

CONS

(b) Except as authorized by G.S.122C-53 through G.S.122C-56, no individual having access to confidential information may disclose this information.

G.S.122-8.1(g)

(c) Except as provided by G.S.122C-53 through G.S.122C-56, each client has the right that no confidential information acquired be disclosed by the facility.

G.S.122-8.1(a)

(d) No provision of G.S.122C-53 through G.S.122C-56 permitting disclosure of confidential information may apply to the records of a

G.S.122-8.1(f)

client when federal statutes or regulations applicable to that client prohibit the disclosure of this information.

(e) Except as required or permitted by law, disclosure of confidential information to someone not authorized to receive the information is a misdemeanor and is punishable by a fine, not to exceed five hundred dollars ($500.00). — G.S.122-8.2, G.S.122-56.8, G.S.122-58.25

§122C-53. Exceptions; client.-- (a) A facility may disclose confidential information if the client or his legally responsible person consents in writing to the release of the information to a specified person or agency. This release is valid for a specified length of time and is subject to revocation by the consenting individual. — CCP

(b) A facility may disclose the fact of admission or discharge of a client to the client's next of kin whenever the responsible professional determines that the disclosure is in the best interest of the client. — CCP

(c) Upon request a client shall have access to confidential information in his client record except information that would be injurious to the client's physical or mental well-being as determined by the attending physician, or if there is none, by the facility director or his designee. If the attending physician or, if there is none, the facility director or his designee has refused to provide confidential information to a client, the client may request that the information be sent to a physician or psychologist of the client's choice, and in this event the information shall be so provided. — CCP with SC#3 release to indep. prof. not in current policy

(d) Except as provided by G.S. 90-21.4(b), upon request the legally responsible person of a client shall have access to confidential information in the client's record; except information that would be injurious to the client's physical or mental well-being as determined by the attending physician or, if there is none, by the facility director or his designee. If the attending physician or, if there is none, the facility director or his designee has refused to provide confidential information to the legally responsible person, the legally responsible person may request that the information be sent to a physician or psychologist of the legally responsible person's choice, and in this event the information shall be so provided. — CCP with SC#3 see (c) above for a client's access to his record.

(e) A client advocate's access to confidential information and his responsibility for safeguarding this information are as provided by subsection (g) of this section. — CCP

(f) As used in subsection (g) of this section, the following terms have the meanings specified:

(1) 'Internal client advocate' means a client advocate who is employed by the facility or has a written contractual agreement with the Department or with the facility to — CCP with SC#4 contract advocates considered

provide monitoring and advocacy services to clients in the facility in which the client is receiving services; and — internal

(2) 'External client advocate' means a client advocate acting on behalf of a particular client with the written consent and authorization

a. In the case of a client who is an adult and who has not been adjudicated incompetent under Chapters 33 or 35 of the General Statutes, of the client or his legally responsible person; or

b. In the case of any other client, of the client and his legally responsible person.

(g) An internal client advocate shall be granted, without the consent of the client or his legally responsible person, access to routine reports and other confidential information necessary to fulfill his monitoring and advocacy functions. In this role,the internal client advocate may disclose client identifying information received to the client involved, to his legally responsible person, to the director of the facility or his designee, to other individuals within the facility who are involved in the treatment or habilitation of the client, or to the Department in accordance with the rules of the Commission. Any further disclosure shall require the written consent of the client or his legally responsible person. An external client advocate shall have access to confidential information only upon the written consent of the client or his legally responsible person. In this role, the client advocate may use the information only as authorized by the client and his legally responsible person. — CCP

(h) In accordance with G.S. 122C-205(c), the facility shall notify the appropriate individuals upon the escape from and subsequent return of clients to a 24-hour facility. — CONS

(i) Upon the request of a client, a facility shall disclose to an attorney confidential information relating to that client. — G.S.122-55.2(d) G.S.122-55.14(c)

'§122C-54. Exceptions; abuse reports and court proceedings.-- — G.S.122-8.1(a)

(a) A facility shall disclose confidential information if a court of competent jurisdiction issues an order compelling disclosure.

(b) If an individual is a defendant in a criminal case and a mental examination of the defendant has been ordered by the court, the facility may send the results or the report of the mental examination to the clerk of court, to the district attorney or prosecuting officer, and to the attorney of record for the defendant as provided in G.S. 15A-1002(d). — G.S.122-8.1(a)

(c) Certified copies of written results of examinations by physicians and records in the cases of clients voluntarily admitted or involuntarily committed and facing district court hearings and rehearings pursuant to Article 5 of this Chapter shall be furnished by the facility to the client's — G.S.122-8.1(b)

counsel, the attorney representing the State's interest, and the court. The confidentiality of client information shall be preserved in all matters except those pertaining to the necessity for admission or continued stay in the facility or commitment under review. The relevance of confidential information for which disclosure is sought in a particular case shall be determined by the court with jurisdiction over the matter. — Last sentence CCP

(d) Any individual seeking confidential information contained in the court files or the court records of a proceeding made pursuant to Article 5 of this Chapter may file a written motion in the cause setting out why the information is needed. A district court judge may issue an order to disclose the confidential information sought if he finds the order is appropriate under the circumstances and if he finds that it is in the best interest of the individual admitted or committed or of the public to have the information disclosed. — G.S.122-56.9 CONS Expanded confidentiality of all commitment/admission records maintained by court to include adults as well as minors. G.S.122-58.26

(e) Upon the request of the legally responsible person or the minor admitted or committed, and after that minor has both been released and reached adulthood, the court records of that minor made in proceedings pursuant to Article 5 of this Chapter may be expunged from the files of the court. The minor and his legally responsible person shall be informed in writing by the court at the time of the initial court record of the right provided by this subsection. — G.S.122-56.8 G.S.122-58.25 SC#5 last sentence NEW

(f) A State facility and the psychiatric service of North Carolina Memorial Hospital may disclose client identifying information to staff attorneys of the Attorney General's office whenever the information is necessary to the performance of the statutory responsibilities of the Attorney General's office or to its performance when acting as attorney for a State facility or the psychiatric service of North Carolina Memorial Hospital. — CCP

(g) A facility may disclose client identifying information to an attorney representing the facility in litigation against the facility if such information is relevant to the litigation. — CCP

(h) A facility may disclose confidential information for purposes of complying with Article 44 of Chapter 7A of the General Statutes and Article 3 of Chapter 108A of the General Statutes, or as required by statute. — CCP

'§122C-55. Exceptions; care and treatment.--(a) Any area or State facility or the psychiatric service of North Carolina Memorial Hospital may share confidential information regarding any client of that facility with any other area or State facility or the psychiatric service of North Carolina Memorial Hospital upon a written determination by the — G.S.122-8.1(d) G.S.122-8.1(c) SC#6 Sharing of information granted to area and

responsible professional possessing the information that the sharing of information is necessary for the appropriate and effective care and treatment of the client and that failure to share this information would be detrimental to the care and treatment of the client. Under the circumstances described in this subsection, the consent of the client or legally responsible person is not required for this information to be furnished, and the information may be furnished despite objection by the client.

State facilities and NCMH on a need to know basis.

(b) A facility, physician, or other individual responsible for evaluation, management, supervision, and treatment of respondents examined or committed for outpatient treatment under the provisions of Article 5 of this Chapter may request, receive, and disclose confidential information to the extent necessary to enable them to fulfill their responsibilities.

G.S.122-8.1(h) CONS Added "examined or" and "evaluation"

(c) A facility may furnish confidential information in its possession to the Department of Correction when requested by that department regarding any client of that facility when the inmate has been determined by the Department of Correction to be in need of treatment for mental illness, mental retardation, or substance abuse. The Department of Correction may furnish to a facility confidential information in its possession about treatment for mental illness, mental retardation, or substance abuse that the Department of Correction has provided to any present or former inmate if the inmate is presently seeking treatment from the requesting facility or if the inmate has been involuntarily committed to the requesting facility for inpatient or outpatient treatment. Under the circumstances described in this subsection, the consent of the client or inmate shall not be required in order for this information to be furnished and the information shall be furnished despite objection by the client or inmate. Confidential information disclosed pursuant to this subsection is restricted from further disclosure.

G.S.122-8.1(e) CONS deleted "seeking treatment from"

(d) A responsible professional may disclose client identifying information when in his opinion there is an imminent danger to the health or safety of another individual or there is a likelihood of the commission of a felony or violent misdemeanor.

CCP

(e) A responsible professional may exchange confidential information with a physician or other health care provider who is providing emergency medical services to a client. Disclosure of the information is limited to that necessary to meet the emergency as determined by the responsible professional.

CCP

(f) A facility may disclose client identifying information to a provider of support services whenever the facility has entered into a written agreement with a person to provide support services which includes a provision which acknowledges that in receiving, storing, processing, or

CCP with SC#7

otherwise dealing with any client identifying information, he will safeguard and not further disclose the information.

(g) Whenever there is reason to believe that the client is eligible for financial benefits through a governmental agency, a facility may disclose client identifying information to State or federal government agencies. Disclosure is limited to that confidential information necessary to establish financial benefits for a client. After establishment of these benefits, the consent of the client or his legally responsible person is required for further release of client identifying information under this subsection. — CCP

(h) Within a facility, employees, students, consultants or volunteers involved in the care, treatment, or habilitation of a client may exchange client identifying information as needed for the purpose of carrying out their responsibility in serving the client. — CCP

(i) Upon specific request, a responsible professional may release confidential information to a physician who referred the client to the facility. — NEW SC#8

'§122C-56. Exceptions; research and planning.--(a) The Secretary may require nonidentifying client information from State and area facilities for purposes of preparing statistical reports of activities and services and for planning and study. The Secretary may also receive client identifying information from State and area facilities when specifically required by other State or federal law. — G.S. 122-35.44(b) G.S. 122-8.2 CCP

(b) The Secretary may have access to client identifying information from private or public agencies or agents for purposes of research and evaluation in the areas of mental health, mental retardation, and substance abuse. No client identifying information shall be further disclosed. — G.S. 122-8.2

(c) A facility may disclose client identifying information to persons responsible for conducting clinical, financial, or administrative audits if there is a justifiable documented need for this information. A person receiving the information may not directly or indirectly identify any client in any report of the audit or otherwise disclose client identity in any way. — CCP

'§122C-57. Right to treatment and consent to treatment.--(a) Each client who is admitted to and is receiving services from a facility has the right to receive age appropriate treatment for mental health, mental retardation, and substance abuse illness or disability. Each client within 30 days of admission to a facility shall have an individual written treatment or habilitation plan implemented by the facility. The client and his legally responsible person shall be — G.S.122-55.6 SC#9 Added "age appropriate treatment"and added "implemented" in place of "formulated.

informed in advance of the potential risks and alleged benefits of the treatment choices.

(b) Each client has the right to be free from unnecessary or excessive medication. Medication shall not be used for punishment, discipline, or staff convenience.

SC#10 Added staff convenience as an inappropriate reason for medication.

(c) Medication shall be administered in accordance with accepted medical standards and only upon the order of a physician as documented in the client's record.

(d) Each voluntarily admitted client or his legally responsible person has the right to consent to or refuse any treatment offered by the facility. Consent may be withdrawn at any time by the person who gave the consent. If treatment is refused, the qualified professional shall determine whether treatment in some other modality is possible. If all appropriate treatment modalities are refused, the voluntarily admitted client may be discharged. In an emergency, a voluntarily admitted client may be administered treatment or medication, other than those specified in subsection (f) of this section, despite the refusal of the client or his legally responsible person. The Commission may adopt rules for area and State facilities to provide a procedure to be followed when a voluntarily admitted client refuses treatment.

CCP with SC#11

(e) In the case of an involuntarily committed client, treatment measures other than those requiring express written consent as specified in subsection (f) of this section may be given despite the refusal of the client or his legally responsible person in the event of an emergency or when in the opinion of the director of clinical services of the facility or his designee, who may not be the treating physician, the recommended therapeutic measures are a necessary part of the client's treatment or habilitation plan.

CCP with SC#11

(f) Treatment involving electroshock therapy, the use of experimental drugs or procedures, or surgery other than emergency surgery may not be given without the express and informed written consent of the client or his legally responsible person. This consent may be withdrawn at any time by the person who gave the consent. The Commission may adopt rules specifying other therapeutic and diagnostic procedures that require the express and informed written consent of the client or his legally responsible person prior to their initiation.

G.S. 122-55.6

'§122C-58. Civil rights and civil remedies.--Except as otherwise provided in this Chapter, each adult client of a facility keeps the same right as any other citizen of North Carolina to exercise all civil

G.S.122-55.2(c)
G.S.122-55.7

rights, including the right to dispose of property, execute instruments, make purchases, enter into contractual relationships, register and vote, bring civil actions, and marry and get a divorce, unless the exercise of a civil right has been precluded by an unrevoked adjudication of incompetency. This section does not validate the act of any client who was de facto incompetent at the time he committed the act.

'§122C-59. Use of corporal punishment.--Corporal punishment may not be inflicted upon any client. — G.S.122-55.4

'§122C-60. Use of physical restraints or seclusion.--(a) Physical restraint or seclusion of a client shall be employed only when there is probable danger of abuse or injury to himself or others, when substantial property damage is occurring, or when the restraint or seclusion is necessary as a measure of therapeutic treatment. All instances of restraint or seclusion and the detailed reasons for such action shall be documented in the client's record. Each client who is restrained or secluded shall be observed frequently, and a written notation of the observation shall be made in the client's record. — G.S.122-55.3 SC#12 added substantial property damage

(b) The Commission may adopt rules to implement this section. — CONS

'§122C-61. Treatment rights in 24-hour facilities.-- In addition to the rights set forth in G.S. 122C-57, each client who is receiving services at a 24-hour facility has the following rights: — G.S.122-55.6 SC#13 Qualifies conditions for treating physical ailments, expressly authorizes facilities to collect for such cost. Added "for further services designed to enable the client to live as normally as possible"

(1) The right to receive necessary treatment for and prevention of physical ailments based upon the client's condition and projected length of stay. The facility may seek to collect appropriate reimbursement for its costs in providing the treatment and prevention; and

(2) The right to have, as soon as practical during treatment or habilitation but not later than the time of discharge, an individualized written discharge plan containing recommendations for further services designed to enable the client to live as normally as possible. A discharge plan may not be required when it is not feasible because of an unanticipated discontinuation of a client's treatment. With the consent of the client or his legally responsible person, the professionals responsible for the plans shall contact appropriate agencies at the client's destination or in his home community before formulating the recommendations. A copy of the plan shall be furnished to the client or to his legally responsible person and, with the consent of the client, to the client's next of kin. — CCP — CCP

'§122C-62. Additional rights in 24-hour facilities.--(a) In addition to the rights enumerated in G.S. 122C-51 through G.S. 122C-61, each adult client who is receiving treatment or habilitation in a 24-hour facility keeps the right to: G.S.122-55.2

(1) Send and receive sealed mail and have access to writing material, postage, and staff assistance when necessary;

(2) Contact and consult with, at his own expense and at no cost to the facility, legal counsel, private physicians, and private mental health, mental retardation, or substance abuse professionals of his choice; and CCP

(3) Contact and consult with a client advocate if there is a client advocate. CCP

The rights specified in this subsection may not be restricted by the facility and each adult client may exercise these rights at all reasonable times.

(b) Except as provided in subsection (e) of this section, each adult client who is receiving treatment or habilitation in a 24-hour facility at all times keeps the right to:

(1) Make and receive confidential telephone calls. All long distance calls shall be paid for by the client at the time of making the call or made collect to the receiving party;

(2) Receive visitors between the hours of 8:00 a.m. and 9:00 p.m. for a period of at least six hours daily, two hours of which shall be after 6:00 p.m.;

(3) Communicate and meet under appropriate supervision with individuals of his own choice upon the consent of the individuals;

(4) Make visits outside the custody of the facility unless: CCP Added express exceptions in "a" and "c"

a. commitment proceedings were initiated as the result of the client's being charged with a violent crime, including a crime involving an assault with a deadly weapon, and the respondent was found not guilty by reason of insanity or incapable of proceeding;

b. the client was voluntarily admitted or committed to the facility while under order of commitment to a correctional facility of the Department of Correction; or

c. the client is being held to determine capacity to proceed pursuant to G.S. 15A-1002;

A court order may expressly authorize visits otherwise prohibited by the existence of the conditions prescribed by this subdivision;

(5) Be out of doors daily and have access to facilities and equipment for physical exercise several times a week;

(6) Except as prohibited by law, keep and use personal clothing and

possessions;
(7) Participate in religious worship;
(8) Keep and spend a reasonable sum of his own money;
(9) Retain a driver's license, unless otherwise prohibited by Chapter 20 of the General Statutes; and
(10) Have access to individual, locked storage space for his private use. — CCP Added "locked"

(c) In addition to the rights enumerated in G.S. 122C-51 through G.S. 122C-57 and G.S. 122C-59 through G.S.122C-61, each minor client who is receiving treatment or habilitation in a 24-hour facility has the right to have access to proper adult supervision and guidance. — G.S.122-55.13

In recognition of the minor's status as a developing individual, the minor shall be provided opportunities to enable him to mature physically, emotionally, intellectually, socially, and vocationally. In view of the physical, emotional, and intellectual immaturity of the minor, the 24-hour facility shall provide appropriate structure, supervision and control consistent with the rights given to the minor pursuant to this Article. The facility shall also, where practical, make reasonable efforts to ensure that each minor client receives treatment apart and separate from adult clients unless the treatment needs of the minor client dictate otherwise. — SC#14 Deleted use of term "in loco parentis" in reference to 24-hr. facilities and added fourth sentence in paragraph.

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Each minor client who is receiving treatment or habilitation from a 24-hour facility has the right to: — G.S.122-55.14(a)

(1) Communicate and consult with the agency or individual having legal custody of him;
(2) Contact and consult with, at his own expense or that of his legally responsible person and at no cost to the facility, legal counsel, private physicians, and private mental health, mental retardation, or substance abuse professionals, of his or his legally responsible person's choice; and — CCP
(3) Contact and consult with a client advocate, if there is a client advocate. — CCP

The rights specified in this subsection may not be restricted by the facility and each minor client may exercise these rights at all reasonable times. — CCP

(d) Except as provided in subsection (e) of this section, each minor client who is receiving treatment or habilitation in a 24-hour facility has the right to: — G.S.122-55.14(b) with variations to make consistent with adult rights

(1) Make and receive telephone calls. All long distance calls shall be paid for by the client at the time of making the call or made collect to the receiving party;
(2) Send and receive mail and have access to writing materials,

postage, and staff assistance when necessary;

(3) Under appropriate supervision, receive visitors between the hours of 8:00 a.m. and 9:00 p.m. for a period of at least six hours daily, two hours of which shall be after 6:00 p.m.; however visiting shall not take precedence over school or therapies;

(4) Receive special education and vocational training in accordance with federal and State law;

(5) Be out of doors and participate in play, recreation, and physical exercise on a regular basis in accordance with his needs;

(6) Except as prohibited by law, keep and use personal clothing and possessions under appropriate supervision;

(7) Participate in religious worship;

(8) Have access to individual storage space for the safe-keeping of personal belongings;

(9) Have access to and spend a reasonable sum of his own money; and

(10) Retain a driver's license, unless otherwise prohibited by Chapter 20 of the General Statutes.

(e) No right enumerated in subsections (b) or (d) of this section may be limited or restricted except by the qualified professional responsible for the formulation of the client's treatment or habilitation plan. A written statement shall be placed in the client's record that indicates the detailed reason for the restriction. The restriction shall be reasonable and related to the client's treatment or habilitation needs. A restriction is effective for a period not to exceed thirty days. An evaluation of each restriction shall be conducted by the qualified professional at least every seven days, at which time the restriction may be removed. Each evaluation of a restriction shall be documented in the client's record. Restrictions on rights may be renewed only by a written statement entered by the qualified professional in the client's record that states the reason for the renewal of the restriction. In the case of an adult client who has not been adjudicated incompetent, in each instance of an initial restriction or renewal of a restriction of rights, an individual designated by the client shall, upon the consent of the client, be notified of the restriction and of the reason for it. In the case of a minor client or an incompetent adult client, the legally responsible person shall be notified of each instance and of the reason for it. Notification of the designated individual or legally responsible person shall be documented in writing in the client's record.

SC#15 length of restriction revised to 30 days w/ 7 day observation and 30 day notice

(f) The Commission may adopt rules to implement subsection (e) of this section.

(g) With regard to clients being held to determine capacity to

G.S. 122-55.2(d)

proceed pursuant to G.S. 15A-1002 or clients in a facility for substance abuse, and notwithstanding the prior provisions of this section, the Commission may adopt rules restricting the rights set forth under (b)(2) and (d)(3) of this section if restrictions are necessary and reasonable in order to protect the health, safety, and welfare of the client involved or other clients.

SC#16 Comm. instead of fac. director. Limited by SAS for... threatened to... health and safety G.S.7 Allows gen. hosp to vary rights of gen. hosp. patients

(h) The rights stated in subdivisions (b)(2), (b)(4), (b)(5), (b)(10), (d)(3), and (d)(5) may be modified in a general hospital by that hospital to be the same as for other patients in that hospital. Such rights as modified under this subsection are still subject to restriction under subsection (e) of this section.

'§122C-63. Assurance for continuity of care for individuals with mental retardation.-- (a) Any individual with mental retardation admitted for residential care or treatment to any 24-hour facility, operated under the authority of this Chapter and supported all or in part by State appropriated funds, for other than respite or emergency care, shall have the right to residential placement in an alternative facility if the individual is in need of placement and if the original facility can no longer provide the care or treatment.

G.S. 122-55.?

(b) The area authority that serves the county of residence of the individual is responsible for the coordination of the placement.

(c) The Secretary is responsible for coordinative and firancial assistance to the area authority in assuring this continuity of care.

(d) In accordance with G.S. 143B-147(a)(1) the Commission shall develop programmatic rules to implement this section, and in accordance with G.S. 122C-112(a)(6), the Secretary shall adopt budgetary rules to implement this section.

'§122C-64. Human rights committees.-- Human rights committees responsible for protecting the rights of clients shall be established at each State facility and may be established for area authorities. The Commission shall adopt rules for the establishment of committees. These rules shall include the composition and duties of the committees and procedures for appointment of the members by the Secretary for State facilities and by the area board for area authorities.

CCP with SC#18 Comm. rules on area committees

'§122C-65. Offenses relating to clients.--(a) For the protection of clients receiving treatment or habilitation in a 24-hour facility, it is unlawful for any individual who is not a client in a facility.

G.S.122-71.2

(1) To assist, advise, or solicit, or to offer to assist, advise, or solicit a client of a facility to leave without authority;

G.S.122-23 G.S.122-54

(2) To transport or to offer to transport a client of a facility to

or from any place without the facility's authority;
(3) To receive or to offer to receive a minor client of a facility into any place, structure, building, or conveyance for the purpose of engaging in any act that would constitute a sex offense, or to solicit a minor client of a facility to engage in any act that would constitute a sex offense;
(4) To hide an individual who has left a facility without authority; or;
(5) To engage in, or offer to engage in an act with a client of a facility that would constitute a sex offense .

(b) Violation of this section isd a misdemeanor and is punishable as provided in G.S. 14-3.

'§122C-66. Protection from abuse and exploitation; reporting.-- SC#19

(a) As used in this section, the following terms have the meanings specified:
(1) 'Client abuse' means knowingly causing pain or injury to a client through a physical act that is not a generally accepted medical or therapeutic procedure;
(2) 'Client exploitation' means both the borrowing or taking of personal property from a client, excluding generally accepted therapeutic procedures, or engaging in any sexual activity with a client, with or without the client's consent;
(3) 'Employee' means an employee or independent contractor, but does not include a volunteer.

(b) It is unlawful for an employee of or a volunteer at a facility to commit client abuse or client exploitation. An employee or volunteer who commits client abuse or client exploitation is guilty of a misdemeanor and is punishable as provided in G.S. 14-3."

(c) An employee of a facility who witnesses or has knowledge of client abuse, client exploitation, or accidental injury to a client shall report the client abuse, client exploitation, or accidental injury to authorized personnel designated by the facility. No employee making a report may be threatened or harassed by any other employee on account of the report. Violation of this subsection is a misdemeanor punishable by a fine, not to exceed five hundred dollars ($500.00)."

(d) The identity of an individual who makes a report under this section or who cooperates in an ensuing investigation may not be disclosed without his consent, except to persons authorized by the facility or by State or federal law to investigate or prosecute these incidents, or in a grievance or personnel hearing or civil or criminal action in which a reporting individual is testifying, or when disclosure is legally compelled or authorized by judicial discovery.

(f) An employee who makes a report in good faith under this section is immune from any civil liability that might otherwise occur for the report. In any case involving liability, making of a report under this section is prima facie evidence that the maker acted in good faith.

(g) Violation of this section is a misdemeanor. This offense is in addition to any other civil or criminal penalty otherwise provided by law and does not repeal or preclude any other sanction or remedy.

(h) The duty imposed by this section is in addition to any duty imposed by G.S. 7A-543 or G.S.108A-102.

(i) The facility shall investigate or provide for the investigation of all reports made of client abuse or client exploitation.

'§122C-67. Other rules regarding abuse, exploitation, neglect not prohibited.-- G.S. 122C-66 does not prohibit the Commission from adopting rules for State and area facilities and does not prohibit other facilities from issuing policies regarding other forms of prohibited abuse, exploitation, or neglect. SC#19

'Article 4.
'Organization and System for Delivery of Mental Health, Mental Retardation, and Substance Abuse Services.

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'Part 1. Policy.

'§122C-101. Policy.--Within the public system of mental health, mental retardation, and substance abuse services, there are both area and State facilities. An area authority is the locus of coordination among public services for clients of its catchment area. To assure the most appropriate and efficient care of clients within the publicly supported service system, area authorities are encouraged to develop and secure approval for a single portal of entry and exit policy for their catchment areas. G.S.122-35.35 First two sentences CCP.

'Part 2. State, County and Area Authority.

'§122C-111. Administration.--The Secretary shall administer and enforce the provisions of this Chapter and the rules of the Commission and shall operate State facilities. An area director shall administer the programs of the area authority and enforce the rules of the area board, applicable State laws, rules of the Commission, and rules of the Secretary. The Secretary in cooperation with area directors and State facility directors shall provide for the coordination of services between G.S.122-1 G.S.122-35.38(1) G.S.122-35.45(c) G.S.143B-137 G.S.122-35.37

area authorities and State facilities.

'§122C-112. Powers and duties of the Secretary.--(a) The Secretary shall:

(1)	Enforce the provisions of this Chapter and the rules of the Commission and the Secretary;	G.S.122-1 G.S.122-35.38 G.S.143B-137
(2)	Assist counties and area authorities in the establishment and operation of community-based programs within catchment areas specified in rules adopted by the Commission;	G.S.122-35.24 G.S.122-35.26 G.S.122-35.37 G.S.122-73
(3)	Operate State facilities and adopt rules pertaining to their operation;	G.S.122-1 G.S.122-3 G.S.122-7 G.S.122-7.1 G.S.122-7.2 G.S.122-11.6 G.S.122-12 G.S.122-35.38 G.S.122-69 G.S.122-98.1 G.S.122-98.2
(4)	Promote a unified system of services for the citizens of this State by coordinating services provided in State facilities and area facilities;	G.S.122-35.37
(5)	Approve the plans and budgets of an area authority and adopt rules pertaining to the content and format of these plans and budgets;	G.S.122-35.43(a) G.S.122-35.44 G.S.143B-139.1
(6)	Adopt rules governing the expenditure of all area authority funds;	G.S.122-35.44 G.S.143B-139.1
(7)	Adopt rules for the establishment of single portal designation and approve an area as a single portal area;	G.S.122-35.36(13)
(8)	Except as provided in G.S.122C-26(4), adopt rules establishing procedures for waiver of rules adopted by the Secretary under this Chapter.	
(9)	Notify the clerks of superior court of changes in the designation of State facility regions and of facilities designated under G.S.122C-252;	G.S.122-4
(10)	Promote public awareness and understanding of mental health, mental illness, mental retardation, and substance abuse;	G.S.122-109(2)
(11)	Administer and enforce rules that are conditions of participation in federal or State financial aid; and	G.S.122-35.38
(12)	Carry out G.S.122C-361.	CONS

(b) The Secretary may:

(1) Acquire by purchase or otherwise in the name of the Department equipment, supplies, and other property, real or personal, necessary to carry out the mental health, mental retardation, and substance abuse programs;

(2) Sponsor training opportunities in the fields of mental health, mental retardation, and substance abuse.

(3) Promote and conduct research in the fields of mental health, mental retardation, and substance abuse;

(4) Provide technical assistance for the development and improvement of prevention services;

(5) Receive donations of money, securities, equipment, supplies, realty, or any other property of any kind or description which shall be used by the Department for the purpose of carrying out its mental health, mental retardation, and substance abuse programs. Any donations shall be reported to the Office of State Budget and Management as determined by that office;

(6) Accept, allocate, and spend any federal funds for mental health, mental retardation, and substance abuse activities that may be made available to the State by the federal government. This Chapter shall be liberally construed in order that the State and its citizens may benefit fully from these funds. Any federal funds received shall be deposited with the State Treasurer and shall be appropriated by the General Assembly for the mental health, mental retardation, or substance abuse purposes specified;

(7) Enter agreements authorized by G.S.122C-346.

'§122C-113. Cooperation between Secretary and other agencies.--(a) The Secretary shall cooperate with other State agencies to coordinate services for the treatment and habilitation of individuals who are mentally ill, mentally retarded, or substance abusers. The Secretary shall also coordinate with these agencies to provide public education to promote a better understanding of mental illness, mental retardation, and substance abuse.

(b) The Secretary shall promote cooperation among area facilities, State facilities, and local agencies to facilitate the provision of services to individuals who are mentally ill, mentally retarded, or substance abusers.

(c) The Secretary shall adopt rules to assure this coordination.

'§122C-114. Powers and duties of the Commission.--The Commission

shall have authority as provided by this Chapter, Chapters 90 and 148 of the General Statutes, and by G.S. 143B-147.

'§122C-115. Powers and duties of counties and cities.--(a) Except as provided in G.S. 153A-77, a county shall provide mental health, mental retardation, and substance abuse services through an area authority. — CCP and CONS

(b) Counties and cities may appropriate funds for the support of programs that serve the catchment area, whether the programs are physically located within a single county or whether any facility housing a program is owned and operated by the city or county. Counties and cities may make appropriations for the purposes of this Chapter and may allocate for these purposes other revenues not restricted by law, and counties may fund them by levy of property taxes pursuant to G.S.153A-149(c)(22). — G.S.122-35.35; G.S.122-35.42; G.S.122-73 (See also Sec. 57 of this bill)

(c) Within a catchment area designated by the Commission, a board of county commissioners or two or more boards of county commissioners jointly shall establish an area authority with the approval of the Department. — G.S.122-35.37; G.S.122-35.39(a); G.S.122-35.36(2)

'§122C-116. Status of area authority.-- An area authority is a local political subdivision of the State except that a single county area authority is considered a department of the county in which it is located for the purposes of Chapter 159 of the General Statutes. — G.S.122-35.36(1)

'§122C-117. Powers and duties of the area authority.--(a) The area authority shall: — G.S.122-35.37

(1) Engage in comprehensive planning, budgeting, implementing, and monitoring of community-based mental health, mental retardation, and substance abuse services; — G.S.122-35.36(1)

(2) Provide services to clients in the catchment area;

(3) Determine the needs of the area authority's clients and coordinate with the Department the provision of services to clients through area and State facilities; — G.S.122-35.43

(4) Develop plans and budgets for the area authority subject to the approval of the Secretary; — G.S.122-35.43; G.S.122-35.44

(5) Assure that the services provided by the area authority meet the rules of the Commission and Secretary; — G.S.122-35.37; G.S.122-35.49(a)

(6) Comply with federal requirements as a condition of receipt of federal grants; and — G.S.122-35.35

(7) Appoint an area director. — G.S.122-35.45(c) SC#20 removed w/ approval of Sec'y

(b) The governing unit of the area authority is the area board. All

powers, duties, functions, rights, privileges, or immunities conferred on the area authority may be exercised by the area board.

'§122C-118. Structure of area board.--(a) An area board shall have no less than 15 members and no more than 25 members. The size of the area board may be changed from time to time as follows: G.S.122-35.40(a), SC#21 added proc. to change size

(1) In a single-county area, by the board of county commissioners;

(2) In a multi-county area by agreement of the boards of county commissioners of all the counties in the catchment area. The agreement shall be evidenced by concurrent resolutions adopted by the affected boards of county commissioners.

(b) In a single county area, the board of county commissioners shall appoint the members of the area board who shall serve terms of four years but who may be removed with or without cause. G.S.122-35.39(b)

(c) In areas consisting of more than one county, each board of county commissioners within the area shall appoint one commissioner as a member of the area board. The member appointed by a board of county commissioners shall serve a term to expire at the expiration of the member's then current term as a county commissioner, but he may be removed with or without cause by the board of county commissioners that appointed him. The members appointed by boards of county commissioners shall appoint and may remove the other members with or without cause. G.S.122-35.39(b) G.S.122-35.39(c) G.S.122-35.40(c)

(d) The group of county commissioners authorized to make appointments to the area board shall appoint new members to the area board to fill vacancies occurring on the board before the end of the appointed term of office. These appointments are for the rest of the unexpired term of office. G.S.122-35.39(d)

(e) The area board shall include: G.S.122-35.40(b)

(1) At least one county commissioner from each county in the area except that in a single-county area authority the board of commissioners may instead appoint any resident of the county;

(2) At least two physicians licensed under Chapter 90 of the General Statutes to practice medicine in North Carolina;

(3) At least one professional representative from the fields either of psychology, social work, nursing, or religion;

(4) At least one individual each representing the interests of or from citizens' organizations representing the interests of individuals with:

a. Mental illness;

b. Mental retardation;

c. Alcoholism; and

d. Drug abuse;

(5) At least one representative from local hospitals or area

planning organizations; and
(6) At least one attorney licensed to practice in North Carolina. SC#22 was practicing att'y

(f) Any member of an area board who is a county commissioner serves on the board in an ex-officio capacity. The terms of county commissioners on an area board are concurrent with their terms as county commissioners. The terms of the other members on the area board shall be for four years, except that upon the initial formation of an area board, one fourth shall be appointed for one year, one fourth for two years, one fourth for three years, and all remaining members for four years. G.S.122-35.40(c)

'§122C-119. Organization of area board.-- (a) The area board shall meet at least six times per year. G.S.122-35.40

(b) Meetings shall be called by the area board chairman or by three or more members of the board after notifying the area board chairman in writing.

(c) Members of the area board elect the board's chairman. The term of office of the area board chairman shall be one year. A county commissioner area board member may serve as the area board chairman.

'§122C-120. Compensation of area board members.--(a) Area board members may receive as compensation for their services per diem and a subsistence allowance for each day during which they are engaged in the official business of the area board. The amount of the per diem and subsistence allowances shall be established by the area board and the amounts shall not exceed those authorized by G.S. 138-5 for State boards. G.S.122-35.40A

(b) Area board members may be reimbursed for all necessary travel expenses and registration fees in amounts fixed by the board.

'§122C-121. Area director.-- The area director is an employee of the area board and shall serve at the pleasure of the area board. The director is responsible for the staff appointments, for implementation of the policies and programs of the board in compliance with rules of the Commission and the Secretary, and for the supervision of all service programs and staff. G.S.122-35.45(c)

'§122C-122 Public guardians.-- The officers and employees of the Division, or any successor agency, and the area director or any officer or employee of an area authority designated by the area board, or any officer or employee of any area facility designated by the area board, may, if they are a disinterested public agent as defined by G.S. 35-1.7(4), serve as guardians for adults adjudicated incompetent under the provisions of Article 1A of Chapter 35 of the General Statutes, and they shall so act if ordered to serve in that capacity by the clerk of superior court having G.S.122-24.1 Revised to be consistent w/ G.S. Ch. 35.

jurisdiction of a guardianship proceeding brought under that Article. Bond shall be required or purchased as provided by G.S. 35-1.19.

'Part 3. Service Delivery System.

'§122C-131. Composition of system.--Mental health, mental retardation, and substance abuse services of the public system in this State shall be delivered through area authorities and State facilities. G.S.122-1 G.S.122-35.35

'§122C-132. Single portal of entry and exit designation.--(a) The public system should provide for a single portal of entry and exit policy. In order to accomplish this objective, an area authority desiring designation as a singal portal area shall present to the Secretary a single portal of entry and exit plan approved by the area board. The decision as to whether to choose to submit a plan is in the discretion of the area authority after weighing the policy goal stated in this subsection and in G.S. 122C-101. G.S.122-35.35 G.S.122-35.36(13) G.S.122-35.36(14)

(b) In order for a single portal area to be designated, the single portal of entry and exit plan shall be subject to approval by the Secretary. Once an area is designated by the Secretary as a single portal area, any changes to the plan shall be subject to approval by the Secretary. However, an approved plan and designation as a single portal area shall remain in force pending approval of any changes. G.S.122-35.36(18)

(c) The plan shall include but not be limited to: G.S.122-35.43(d)

(1) A specific listing of facilities to be covered by the single portal of entry and exit plan;
(2) Procedures for review of individuals to be admitted to or discharged from State and area facilities;
(3) Procedures for shared responsibility when individuals are admitted directly to a State facility;
(4) Evidence of incorporation of these plans within the contracts between the area authority and the State facilities as required by G.S.122C-143(c) and with other public and private agencies as required in G.S. 122C-141;
(5) Evidence of cooperative arrangements with local law enforcement, local courts, and the local medical society; and
(6) Procedures for review of citizen complaints.

(d) Residents of a county in a designated single portal area shall be admitted to or discharged from State and area facilities through the area authority as described in the area's single portal of entry and exit policy.

'Part 4. Area Facilities.

'§122C-141. Provision of services.--(a) The area authority may provide services directly and may contract with other public or private agencies, institutions, or resources for the provision of services. G.S.122-35.49

(b) All area authority services provided directly or under contract shall meet the requirements of applicable State statutes and the rules of the Commission and the Secretary. The Secretary may delay payments and, with written notification of cause, may reduce or delay payment of funds if an area authority fails to meet these requirements. G.S.122-35.36(9) G.S.122-35.38 G.S.122-35.41 G.S.122-35.44(d) G.S.122-35.53(g)

'§122C-142. Contract for services.--(a) When the area authority contracts with persons for the provision of services, the area authority shall assure that these contracted services meet the requirements of applicable State statutes and the rules of the Commission and the Secretary. Terms of the contract shall require the area authority to monitor the contract to assure that rules and State statutes are met. The Secretary may also monitor contracted services to assure that rules and State statutes are met. G.S.122-35.49(a) Last sentence CCP

(b) When the area authority contracts for services, it may provide funds to purchase liability insurance, to provide legal representation, and to pay any claim with respect to liability for acts, omissions, or decisions by members of the boards or employees of the persons with whom the area authority contracts. These acts, omissions, and decisions shall be ones that arise out of the performance of the contract and may not result from actual fraud, corruption, or actual malice on the part of the board members or employees. G.S.122-35.49(b)

'§122C-143. Plans and budgets required by the Secretary.--(a) Subject to the rules of the Secretary, area authorities shall develop and submit plans and budgets, including annual plans and budgets that provide for the delivery of services to residents of the catchment area. G.S.122-35.27 G.S.122-35.43 G.S.143B-137 Comm. changed to Secretary CCP

(b) The annual plan and budget shall include an inventory of existing services, a description of the needs of catchment area residents, and major actions to be completed by the area authority to meet the identified needs. It shall also include strategies consistent with Parts 7 and 8 of Article 5 of this Chapter for maximum utilization of area facilities. G.S.122-35.43 G.S.122-58.16

(c) The annual plan and budget shall include a plan for contracting with those State facilities designated to serve residents of the catchment area. G.S.122-35.43(c)

(d) The annual plan and budget shall show the planned spending of all local, State, and federal funds for each service according to the source of the funds. G.S.122-35.43

(e) In addition to annual plans and budgets, the Secretary may require area authorities to develop with State facilities joint long-range plans that identify needs and resources to address those needs in the least restrictive setting, if the least restrictive setting is therapeutically most appropriate, and that provide a method for coordination of services. CCP

(f) Plans and budgets and subsequent changes are subject to approval by the Secretary. If the Secretary disapproves a plan and budget or subsequent changes, the Secretary may delay payments and with written notification of cause may reduce or deny payment of funds. If the Secretary later approves the plan and budget or subsequent changes, restoration of funds is within the discretion of the Secretary. G.S.122-35.43 G.S.122-35.53(g) Added restoration clause. CCP

'§122C-144. Reports.--(a) Periodically as specified by the Secretary by rule, each area authority shall provide the Secretary and the board or boards of county commissioners with: G.S.122-35.44

(1) A budget report that indicates receipts and expenditures for the total area authority according to a reporting format prescribed by the Secretary. This format shall conform as nearly as practical to the recommended budget format of the Local Government Commission under the provisions of the Local Government Budget and Fiscal Control Act, Article 3 of Chapter 159 of the General Statutes; and

(2) An audit report prepared by an independent certified public accountant, which report may be made by the county independent certified public accountant as a part of the county's normal annual audit if satisfactory to the Secretary.

(b) The Secretary may require reports of activities and services of the area authority, but the reports may not identify individual clients of the area authority unless specifically required by State statute, federal statute or regulation, or unless valid consent for the release has been given by the client or legally responsible person. SC#23A deleted requirement to send copies to co. comm'rs.

(c) Reports required of the area authority by the Secretary shall be reviewed by the Secretary biennially, and only those reports considered necessary by the Secretary shall thereafter be required.

(d) If an area authority fails to file required reports within the time limit set by the Secretary, the Secretary may:

(1) delay payments; and,

(2) with written notification of cause and subject to an appeal as provided by G.S.122C-145, may reduce or deny payment of funds.

'§122C-145. Appeal by area authorities.--(a) The area authority may appeal to the Commission any action regarding rules under the jurisdiction of the Commission or rules under the joint jurisdiction of the Commission G.S.122-35.42 G.S.122-35.50 G.S.122-35.52

and the Secretary.

(b) The area authority may appeal to the Secretary any action regarding rules under the jurisdiction of the Secretary.

(c) Appeals shall be conducted according to rules adopted by the Commission and Secretary and in accordance with Chapter 150A of the General Statutes.

'§122C-146. Fee for service.--The area authority and its contractual agencies shall prepare fee schedules for services and shall make every reasonable effort to collect appropriate reimbursement for costs in providing these services from individuals able to pay, including insurance and third-party payment. However, no individual may be refused services because of an inability to pay. All funds collected from fees from area authority operated services shall be used for the fiscal operation or capital improvements of the area authority's programs. The collection of fees by an area authority may not be used as justification for reduction or replacement of the budgeted commitment of local tax revenue.

G.S.122-35.47
SC#23
Requires contract agencies to collect fees inserted "as justification"

'§122C-147. Allocation of funds to area authorities.--(a) All State and federal funds appropriated within the Department's budget for area mental health, mental retardation, and substance abuse services shall be allocated to area authorities in accordance with the annual plan and budget adopted by the area authority and approved by the Secretary. An area authority may receive and allocate non-State resources for capital purchases, capital improvements, and equipment acquisitions if the expenditures are made in the support of the annual plan. The final share of State and federal funds shall be allocated on the basis of actual expenditures and reported in a way prescribed by the Secretary. Unspent State and federal funds shall be remitted to the Department within 60 days after the date that a certified audit is rendered as required by the Local Government Commission. If an audit is not submitted to the State within five days of the due date for the audit as approved by the Local Government Commission, Department funds for the area authority may be withheld by the Secretary until the audit is submitted.

G.S.122-35.53

SC#24
Changed from 120 days at end of fiscal year

(b) Unless otherwise specified by the Secretary, State appropriations to area authorities shall be used exclusively for the operating costs of the area authority; provided however:

(1) The Secretary may specify that designated State funds may be used by area authorities (i) for the purchase, alteration, improvement, or rehabilitation of real estate to be used as a residential facility or (ii) in contracting with a private, nonprofit corporation that operates residential facilities for the mentally ill, mentally

Adds authority for areas to use designated State funds for purchase of residnt'l facilities

retarded, or substance abusers and according to the terms of the contract between the area authority and the private, nonprofit corporation, to make a lump sum down payment or periodic payments on a real property mortgage in the name of the private, nonprofit corporation. SC#25

(2) Upon cessation of the use of the residential facility by the area authority, if operated by the area authority, or upon termination, default, or non-renewal of the contract if operated by a contractual agency, the Department shall be reimbursed in accordance with rules adopted by the Secretary for the Department's participation in the purchase of the residential facility.

(c) All real property purchased for use by the area authority shall be provided by local or federal funds unless otherwise allowed under subsection (b) of this section. The title to this real property and the authority to acquire it is held by the county where the property is located. The authority to hold title to real property and the authority to acquire it may be held by the area authority with the consent of the board or boards of commissioners of all the counties which comprise the area authority. The consent to this variation shall be by resolution of the affected board or boards of county commissioners and may have any necessary or proper conditions, including provisions for distribution of the proceeds in the event of disposition of the property by the area authority.

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(d) The area authority may lease real property.

(e) Equipment necessary for the operation of the area authority may be obtained with local, State, federal, or donated funds, or a combination of these.

(f) The area authority may acquire or lease personal property, including by lease-purchase agreement. Title to personal property may be held by the area authority.

(g) All area authority funds shall be spent in accordance with the rules of the Secretary. Failure to comply with the rules is grounds for the Secretary to stop participation in the funding of the particular program. The Secretary may withdraw funds from a specific program of services not being administered in accordance with an approved plan and budget after written notice and subject to an appeal as provided by G.S.122C-145 and Chapter 150A of the General Statutes.

(h) Notwithstanding subsection (b) of this section and in addition to the purposes listed in that subsection, the funds allocated by the Secretary for services for members of the class identified in Willie M., et al. vs. Hunt, et al. (C-C-79-294, Western District) may be used for the purchase, alteration, improvement, or rehabilitation of real property owned or to be owned by a nonprofit corporation and used or to be used as a facility.

(i) Notwithstanding subsection (c) of this section and in addition to the purposes listed in that subsection, funds allocated by the Secretary for services for members of the class identified in Willie M., et al. vs. Hunt, et al.. (C-C-79-294, Western District) may be used for the purchase, alteration, improvement, or rehabilitation of real property used by an area authority as long as the title to the real property is vested in the county where the property is located or is vested in another governmental entity. If the property ceases to be used in accordance with the annual plan, the unamortized part of funds spent under this subsection for the purchase, alteration, improvement, or rehabilitation of real property shall be returned to the Department, in accordance with the rules of the Secretary.

(j) Notwithstanding subsection (c) of this section the area authority, with the approval of the Department, may use local funds for the alteration, improvement, and rehabilitation of real property owned by a nonprofit corporation under contract with the area authority and used or to be used as a residential facility.

Allows local funds to be used to renovate property of contract residential facilities SC#26

'§122C-148. Allocations to be made annually; base grant; additional allocations.--Subject to the provisions of this Article, allocations shall be made annually by the Department to area authorities for the provision of community-based services. The allocations shall be made in the form of a base grant computed on the basis of one thousand two hundred dollars ($1,200) per 1,000 population within the catchement area. Additional allocations may be made to area authorities on the conditions and formula bases as provided by G.S.122C-147 through G.S.122C-151.

G.S.122-35.54

Adjusted to reflect per capita $$ in recent budgets. CONS

'§122C-149. Allocation of matching funds to area authorities.--

G.S.122-35.55

(a) State appropriated matching funds shall be distributed subject to rules of the Secretary which set a formula based on the relative fiscal capacity of the county to fund mental health, mental retardation, and substance abuse services. The rules shall be reviewed biennially by the Department. Area authority funds used for matching State funds shall include fees from services including Medicare and the local and federal share of Medicaid receipts, fees from agencies under contract, gifts and donations, and county and municipal funds. Except as specifically provided, area financial participation to match State allocations may not include State or federal funds.

(b) Area authorities may not use funds received under G.S.20-179.2(f) or G.S. 90-96.01(a)(4) to match funds under this section.

CONS

'§122C-150. Direct grants for services.--In addition to the allocations provided in G.S.122C-148 and G.S.122C-149, the Department shall make direct grants to area authorities from State and federal funds appropriated for special programs. The grants shall be for the treatment of individuals by area facilities rather than in State facilities and shall be administered as provided in G.S.122C-147. G.S.122-35.56

'§122C-151. Responsibilities of those receiving appropriations.--All resources allocated to and received by any area authority and used for programs of mental health, mental retardation, substance abuse or other related fields are subject to the conditions specified in this Article and to the rules of the Commission and the Secretary. G.S.122-35.57

'§122C-152. Liability insurance and waiver of immunity as to torts of agents, employees, and board members.--(a) An area authority, by securing liability insurance as provided in this section, may waive its governmental immunity from liability for damage by reason of death or injury to person or property caused by the negligence or tort of any agent, employee, or board member of the area authority when acting within the scope of his authority or within the course of his duties or employment. Governmental immunity is waived by the act of obtaining this insurance, but it is waived only to the extent that the area authority is indemnified by insurance for the negligence or tort. 40B

(b) Any contract of insurance purchased pursuant to this section shall be issued by a company or corporation licensed and authorized to execute insurance contracts in this State and shall by its terms adequately insure the area authority against any and all liability for any damages by reason of death or injury to a person or property proximately caused by the negligent acts or torts of the agents, employees, and board members of the area authority when acting within the course of their duties or employment. The area board shall determine the extent of the liability and what agents, employees by class, and board members are covered by any insurance purchased pursuant to this subsection. Any company or corporation that enters into a contract of insurance as described in this section with the authority by this act waives any defense based upon the governmental immunity of the authority.

(c) Any persons sustaining damages, or, in the case of death, his personal representative, may sue an area authority insured under this section for the recovery of damages in any court of competent jurisdiction in this State, but only in a county located within the geographic limits of the authority. It is no defense to any action that the negligence or tort complained of was in pursuance of a governmental or discretionary function of the area authority if, and to the extent that, the authority

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insurance coverage as provided by this section.

(d) Except as expressly provided by subsection (c) of this section, nothing in this section deprives any area authority of any defense whatsoever to any action for damages or to restrict, limit, or otherwise affect any defense which the area authority may have at common law or by virtue of any statute. Nothing in this section relieves any person sustaining damages nor any personal representative of any decedent from any duty to give notice of a claim to the area authority or to commence any civil action for the recovery of damages within the applicable period of time prescribed or limited by statute.

(e) The area authority may incur liability pursuant to this section only with respect to a claim arising after the authority has procured liability insurance pursuant to this section and during the time when the insurance is in force.

(f) No part of the pleadings that relate to or allege facts as to a defendant's insurance against liability may be read or mentioned in the presence of the trial jury in any action brought pursuant to this section. This liability does not attach unless the plaintiff waives the right to have all issues of law or fact relating to insurance in the action determined by a jury. These issues shall be heard and determined by the judge, and the jury shall be absent during any motions, arguments, testimony, or announcement of findings of fact or conclusions of law with respect to insurance.

'§122C-153. Defense of agents, employees, and board members.-- G.S.122-35.40C

(a) Upon request made by or in behalf of any agent, employee, or board member or former agent, employee, or board member of the area authority, any area authority may provide for the defense of any civil or criminal action or proceeding brought against him either in his official or in his individual capacity, or both, on account of any act done or omission made, or any act allegedly done or omission allegedly made, in the scope and course of his duty as an agent, employee, or board member. The defense may be provided by the local board by employing counsel or by purchasing insurance that requires that the insurer provide the defense. Nothing in this section requires any area authority to provide for the defense of any action or proceeding of any nature.

(b) An area authority may budget funds for the purpose of paying all or part of the claim made or any civil judgment entered against any of its agents, employees, or board members or former agents, employees, or board members when a claim is made or judgment is rendered as damages on account of any act done or omission made, or any act allegedly done or omission allegedly made, in the scope and course of his duty as an agent, employee, or board member of the area authority. Nothing in this section

shall authorize any area authority to budget funds for the purpose of paying any claim made or civil judgment against any of its agents, employees, or board members, or former agents, employees, or board members, if the authority finds that the agent, employee, or board member acted or failed to act because of actual fraud, corruption, or actual malice on his part. Any authority may budget for and purchase insurance coverage for payment of claims or judgments pursuant to this section. Nothing in this section requires any authority to pay any claim or judgment referred to, and the purchase of insurance coverage for payment of the claim or judgment may not be considered an assumption of any liability not covered by the insurance contract and may not be deemed an assumption of liability or payment of any claim or judgment in excess of the limits of coverage in the insurance contract.

(c) Subsection (b) of this section does not authorize an authority to pay all or part of a claim made or civil judgment entered or to provide a defense to a criminal charge unless (i) notice of the claim or litigation is given to the area authority before the time that the claim is settled or civil judgment is entered; and (ii) the area authority has adopted, and made available for public inspection, uniform standards under which claims made, civil judgments entered, or criminal charges against agents, employees, or board members or former agents, employees, or board members shall be defended or paid.

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(d) The board or boards of county commissioners that establish the area authority and the Secretary may allocate funds not otherwise restricted by law, in addition to the funds allocated for the operation of the program, for the purpose of paying legal defense, judgments, and settlements under this section.

Deleted G.S. 122-35.40D

'§122C-154. Area authority and area employees not State agents.--(a) Nothing in this Chapter designates an area authority or employees of an area authority as agents of the State.

(b) Nothing in this Chapter waives sovereign immunity so as to include State liability for actions of an area authority or its employees.

SC#27

'§122C-155. Personnel.--Employees under the direct supervision of the area authority are employees of the area authority. For the purpose of personnel administration, Chapter 126 of the General Statutes applies unless otherwise provided in this Article.

G.S.122-35.45(b)

'§122C-156. Supervision of services.-- Unless otherwise specified, client services are the responsibility of a qualified professional. Direct medical and psychiatric services shall be provided by a qualified psychiatrist or a physician with adequate training and experience

G.S.122-35.45(d)

acceptable to the Secretary.

'§122C-157. Salary plan for employees of the area authority.-- G.S.122-35.46
(a) The area authority shall establish a salary plan which shall set the salaries for employees of the area authority. The salary plan shall be in compliance with Chapter 126 of the General Statutes. In a multi-county area, the salary plan shall not exceed the highest paying salary plan of any county in that area. In a single-county area, the salary plan shall not exceed the county's salary plan. The salary plan limitations set forth in this section may be exceeded only if the area authority and the board or boards of county commissioners, as the case may be, jointly agree to exceed these limitations.

(b) An area authority may purchase life insurance or health insurance or both for the benefit of all or any class of authority officers or employees as a part of its compensation. An area authority may provide other fringe benefits for authority officers and employees. G.S.153A-92(d)

(c) An area authority that is providing health insurance under subsection (b) of this section may provide health insurance for all or any class of former officers and employees of the area authority who are receiving benefits under Article 3 of Chapter 128 of the General Statutes. Health insurance may be paid entirely by the area authority, partly by the area authority and former officer or employee, or entirely by the former officer or employee, at the option of the area board. G.S.153A-93(d)

'§122C-158. Establishment of a professional reimbursement policy.--The area authority shall adopt and enforce a professional reimbursement policy. This policy shall (i) require that fees for the provision of services received directly under the supervision of the area authority shall be paid to the area authority, (ii) prohibit employees of the area authority from providing services on a private basis which require the use of the resources and facilities of the area authority, and (iii) provide that employees may not accept dual compensation and dual employment unless they have the written permission of the area authority. G.S.122-35.48

'§122C-159. Privacy of personnel records.--(a) Notwithstanding the provisions of G.S. 132-6 or any other State statute concerning access to public records, personnel files of employees or applicants for employment maintained by an area authority are subject to inspection and may be disclosed only as provided by this section. For purposes of this section, an employee's personnel file consists of any information in any form gathered by the area authority with respect to that employee, including his application, selection or nonselection, performance, promotions, demotions, transfers, suspensions and other disciplinary actions, evaluation forms, G.S.122-35.45A

leave, salary, and termination of employment. As used in this section, 'employee' includes former employees of the area authority.

(b) The following information with respect to each employee is a matter of public record: name; age; date of original employment or appointment to the area authority; current position title; current salary; date and amount of most recent increase or decrease in salary; date of the most recent promotion, demotion, transfer, suspension, separation, or other change in position classification; and the office to which the employee is currently assigned. The area authority shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying during regular business hours, subject only to rules for the safekeeping of public records as the area authority may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue these orders.

(c) All information contained in an employee's personnel file, other than the information made public by subsection (b) of this section, is confidential and is open to inspection only in the following instances:

(1) The employee or an authorized agent may examine portions of his personnel file except (i) letters of reference solicited before employment, and (ii) information concerning a medical disability, mental or physical, that a prudent physician would not divulge to a patient.

(2) A licensed physician designated in writing by the employee may examine the employee's medical record.

(3) An area authority employee having supervisory authority over the employee may examine all material in the employee's personnel file.

(4) By order of a court of competent jurisdiction, any person may examine the part of an employee's personnel file that is ordered by the court.

(5) An official of an agency of the State or federal government, or any political subdivision of the State, may inspect any part of a personnel file when the inspection is considered by the official having custody of the records to be inspected to be necessary and essential to the pursuance of a proper function of the inspecting agency. No information may be divulged for the purpose of assisting in a criminal prosecution of the employee or for the purpose of assisting in an investigation of the employee's tax liability. However, the official having custody of the records may release the name, address, and telephone number from a person's file for the purpose of assisting in a criminal investigation.

(6) An employee may sign a written release, to be placed with the employee's personnel file, that permits the person with custody of the file to provide, either in person, by telephone or by mail, information specified in the release to prospective employers, educational institutions, or other persons specified in the release.

(7) The area authority may tell any person of the employment or nonemployment, promotion, demotion, suspension, or other disciplinary action, reinstatement, transfer, or termination of an employee and the reasons for that personnel action. Before releasing the information, the area authority shall determine in writing that the release is essential to maintaining public confidence in the administration of services or to maintaining the level and quality of services. This written determination shall be retained as a record for public inspection and shall become part of the employee's personnel file.

(d) Even if considered part of an employee's personnel file, the following information need not be disclosed to an employee nor to any other person:

(1) Testing or examination material used solely to determine individual qualifications for appointment, employment, or promotion in the area authority service, when disclosure would compromise the objectivity or the fairness of the testing or examination process.

(2) Investigative reports or memoranda and other information concerning the investigation of possible criminal action of an employee, until the investigation is completed and no criminal action taken, or until the criminal action is concluded.

(3) Information that might identify an undercover law enforcement officer or a law enforcement informer.

(4) Notes, preliminary drafts, and internal communications concerning an employee. In the event these materials are used for any official personnel decision, then the employee or an authorized agent has a right to inspect these materials.

(e) The area authority may permit access, subject to limitations it may impose, to selected personnel files by a professional representative of a training, research, or academic institution if that representative certifies that he will not release information identifying the employees whose files are opened and that the information will be used solely for statistical, research, or teaching purposes. This certification shall be retained by the area authority as long as each personnel file so examined is retained.

(f) The area authority that maintains personnel files containing information other than the information mentioned in subsection (b) of this section shall establish procedures whereby an employee who objects to material in the employee's file on grounds that it is inaccurate or misleading may seek to have the material removed from the file or may place in the file a statement relating to the material.

(g) Permitting access, other than that authorized by this section, to a personnel file of an employee of an area authority is a misdemeanor and is punishable by a fine, not to exceed five hundred dollars ($500.00).

(h) Anyone who, knowing that he is not authorized to do so, examines, removes, or copies information in a personnel file of an employee of an area authority is guilty of a misdemeanor and is punishable by a fine, not to exceed five hundred dollars ($500.00).

'Part 5. State Facilities.

'§122C-181. Secretary's jurisdiction over State facilities.--(a) Except as provided in subsection (b) of this section, the Secretary shall operate the following facilities:

(1) for the mentally ill:
  a. Cherry Hospital;
  b. Dorothea Dix Hospital;
  c. John Umstead Hospital; and
  d. Broughton Hospital; and
(2) for the mentally retarded:
  a. Caswell Center;
  b. O'Berry Center;
  c. Murdoch Center;
  d. Western Carolina Center; and
  e. Black Mountain Center; and
(3) for substance abusers:
  a. Walter B. Jones Alcoholic Rehabilitation Center;
  b. Alcoholic Rehabilitation Center at Butner; and
  c. Alcoholic Rehabilitation Center at Black Mountain; and
(4) as special care facilities:
  a. Wilson Special Care Center;
  b. Whitaker School; and
  c. Wright School

(b) The Secretary may, with the approval of the Governor and Council of State, close any State facility.

'§122C-182. Authority to contract with area authorities.-- To

#28 deleted "may establish" G.S.122-1 G.S.122-1.2 G.S.122-7

G.S.122-69

G.S.122-7.2

G.S.122-7.1

131E-67 122-98.1 122-98.2 NEW

CONS

establish a coordinated system of services for its clients, a State facility shall contract with an area authority. Contracted services shall meet the rules of the Commission and the Secretary. G.S.122C-143(e)

'§122C-183. Appointment of employees as police officers who may arrest without warrant.-- The director of each State facility may appoint as special police officers the number of employees of their respective facilities they consider necessary. Within the grounds of the State facility the employees appointed as special police officers have all the powers of police officers of cities. They have the right to arrest without warrant individuals committing violations of the State law or the ordinances or rules of that facility in their presence and to bring the offenders before a magistrate who shall proceed as in other criminal cases. G.S.122-33 Deleted ref. to Schools for Deaf

'§122C-184. Oath of special police officers.--Before exercising the duties of a special police officer, the employees appointed under G.S. 122C-183 shall take an oath or affirmation of office before an officer empowered to administer oaths. The oath or affirmation shall be filed with the records of the Department. The oath or affirmation of office is: G.S.122-34

State of North Carolina,.....County.

I,....., do solemnly swear (or affirm) that I will well and truly execute the duties of office of special police officer in and for the State facility called ....., according to the best of my skill and ability and according to law; and that I will use my best endeavors to enforce all the ordinances of said facility, and to suppress nuisances, and to suppress and prevent disorderly conduct within these grounds.

So help me, God.

Sworn and subscribed before me, this .....day of....., A.D.....

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'§122C-185. Application of funds belonging to State facilities.--(a) All monies and proceeds of property donated to any State facility shall be deposited into the State treasury and accounted for in the appropriate fund as determined by the Secretary and approved by the Office of State Budget and Management. All monies and proceeds of property donated in which there are special directions for their application and the interest earned on these funds shall be spent as the donor has directed. G.S.122-19 Revised to be cons. w/ G.S. 111, 143, 146, 147.

(b) Proceeds from the transfer or sale of surplus, obsolete, or unused equipment of State facilities shall be deposited and accounted for in accordance with G.S.143-49(4).

(c) The net proceeds from the sale, lease, rental, or other disposition of real estate owned by a State facility shall be deposited and accounted for in accordance with G.S.146-30.

(d) All proceeds from the operation of vending facilities as defined in

G.S.111-42(d) and operated by State facilities shall be deposited and accounted for in accordance with G.S. 143-12.1.

(e) All other revenues and other receipts collected by a State facility shall be deposited to the credit of the State Treasury in accordance with G.S. 147-77.

'§122C-186. General Assembly visitors of State facilities.-- The members of the General Assembly are ex-officio visitors of all State facilities, provided that the common law right of visitation of a State facility is abrogated to the extent that it does not include the right to access to confidential information. This right of access is only as granted by statute.

G.S.122-53
Common law right
restricted CCP

'Part 6. Quality Assurance.

'§122C-191. Quality of services.--(a) The assurance that services provided are of the highest possible quality within available resources is an obligation of the area authority and the Secretary.

G.S.122-35.35
G.S.122-35.41

(b) Each area authority and State facility shall comply with the rules of the Commission regarding quality assurance activities, including: program evaluation; utilization and peer review; and staff qualifications, privileging, supervision, education, and training. These rules may not nullify compliance otherwise required by Chapter 126 of the General Statutes.

CCP

(c) Each area authority and State facility shall develop internal processes to monitor and evaluate the level of quality obtained by all its programs and services including the activities prescribed in the rules of the Commission.

(d) The Secretary shall develop rules for a review process to monitor area facilities and State facilities for compliance with the required quality assurance activities as well as other rules of the Commission and the Secretary.

'§122C-192. Review and protection of information.-- (a) Notwithstanding G.S.8-53, G.S. 8-53.3 or any other law relating to confidentiality of communications involving a patient or client, as needed to ensure quality assurance activities, the Secretary may review any written or other record concerning the admission, discharge, medication, treatment, medical condition, or history of a client of an area authority or State facility. The Secretary may also review the personnel records of employees of an area authority or State facility.

G.S.122-23

(b) An area authority, State facility, its employees, and any other individual interviewed in the course of an inspection are immune from liability for damages resulting from disclosure of any information to the

Secretary.

Except as required by law, it is unlawful for the Secretary or his representative to disclose:

(1) Any confidential or privileged information obtained under this section unless the client or his legally responsible person authorizes disclosure in writing; or

(2) The name of anyone who has furnished information concerning an area authority or State facility without that individual's consent.

Violation of this subsection is a misdemeanor punishable by a fine, not to exceed five hundred dollars ($500.00)."

(c) The Secretary shall adopt rules to ensure that unauthorized disclosure does not occur. Any representative of the Secretary who willfully discloses this information without appropriate authorization or court order is guilty of a misdemeanor and shall be fined not more than five hundred dollars ($500.00).

(d) All confidential or privileged information obtained under this section and the names of individuals providing such information are not public records under Chapter 132 of the General Statutes.

'Article 5.
'Procedures for Admission and Discharge of Clients.

'Part 1. General Provisions.

'§122C-201. Declaration of policy.-- It is State policy to encourage voluntary admissions to facilities. It is further State policy that no individual shall be involuntarily committed to a twenty-four hour facility unless he is mentally ill or a substance abuser and dangerous to himself or others, or unless he is mentally retarded and, because of an accompanying behavior disorder, is dangerous to others. All admissions and commitments shall be accomplished under conditions that protect the dignity and constitutional rights of the individual. G.S.122-56.1 G.S.122-56.3 G.S.122-58.1

It is further State policy that, except as provided in G.S. 122C-212(b), individuals who have been voluntarily admitted shall be discharged upon application and that involuntarily committed individuals shall be discharged as soon as a less restrictive mode of treatment is appropriate.

'§122C-202. Applicability of Article.-- This Article applies to all facilities unless expressly provided otherwise. Specific provisions that are delineated by the disability of the client, whether mentally ill, CONS

mentally retarded, or substance abuser, also apply to all facilities for that client's disability. Provisions that refer to a specific facility or type of facility apply only to the designated facility or facilities

'§122C-203. Admission or commitment and incompetency proceedings to have no effect on one another.-- The admission or commitment to a facility of an alleged mentally ill individual, an alleged substance abuser or an alleged mentally retarded individual under the provisions of this Article shall in no way affect incompetency proceedings as set forth in Chapters 33 or 35 of the General Statutes and incompetency proceedings under those Chapters shall have no effect upon admission or commitment proceedings under this Article.

'§122C-204. Civil liability for corruptly attempting admission or commitment.-- Nothing in this Article relieves from liability in any suit instituted in the courts of this State any individual who unlawfully, maliciously, and corruptly attempts to admit or commit any individual to any facility under this Article.

'§122C-205. Return of clients to 24-hour facilities.--(a) When a client of a 24-hour facility who:

(1) Has been involuntarily committed;
(2) Is being detained pending a judicial hearing;
(3) Has been voluntarily admitted but is a minor or incompetent adult;
(4) Has been placed on conditional release from the facility; or
(5) Is a competent adult who has been voluntarily admitted and who, in the opinion of the responsible professional at the facility involved is currently dangerous to himself or others

escapes or breaches the condition of his release, if applicable, the responsible professional shall immediately notify the appropriate law-enforcement officer of the county of residence of the client, the appropriate law-enforcement officer of the county where the facility is located, and, if applicable, shall have recorded in the client's record the condition of release that has been breached. If there are reasonable grounds to believe that the client is in any county other than his county of residence, the responsible professional shall also notify the appropriate law-enforcement officer of that county. Upon receipt of notice the law-enforcement officer shall take the client into custody and return the client to the facility from which the client has escaped or has been conditionally released. The expense of returning the client is the

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responsibility of the county of residence of the client. Law-enforcement officers notified of a client's escape or breach of conditional release shall be notified of his return.

(b) The responsible professional shall also notify:

(1) The next of kin or legally responsible person;

(2) The clerk of superior court of the county of residence of the client;

(3) The area authority of the county of residence, if appropriate; and

(4) The physician who performed the first examination for commitment, if appropriate,

of the escape or breach of condition of the client's release upon the occurrence of either action and of his subsequent return to the facility.

added (1), (3), & (4)

'§122C-206. Transfers of clients between 24-hour facilities. --(a) Before transferring a voluntary adult client from one 24-hour facility to another, the responsible professional at the original facility shall: (i) get authorization from the receiving facility that the facility will admit the client; (ii) get consent from the client; and (iii) if consent to share information is granted by the client, notify the next of kin of the time and location of the transfer. The preceding requirements of this paragraph may be waived if the client has been admitted under emergency procedures to a State facility not serving the client's region of the State. Following such emergency admissions, the client may be transferred to the appropriate State facility without consent according to the rules of the Commission.

G.S.122-15 deleted

SC#30 All of this section is new language. Concepts taken from G.S. 122-13 122-13.1, 122-14 122-81.2, 122-55.6 LAST TWO SENTENCES NEW

(b) Before transferring a respondent held for a district court hearing or a committed respondent from one 24-hour facility to another, the responsible professional at the original facility shall:

(1) Get authorization from the receiving facility that the facility will admit the respondent, and

(2) Provide reasonable notice to the respondent, or legally responsible person, of the reason for the transfer and document the notice in the client's record.

No later than 24 hours after the transfer, the responsible professional at the original facility shall notify the petitioner, the clerk of court, and, if consent is granted by the respondent, the next of kin, that the transfer is completed. If the transfer is completed before the judicial commitment hearing, these proceedings shall be initiated by the receiving facility.

Under current law transfer to or from private facility can only be made by court order.

(c) Minors and incompetent adults, admitted pursuant to Parts 3 and 4 of this Article, may be transferred from one 24-hour facility to

Deleted directive re transfer of

another following the same procedures specified in subsection (b) of this section. In addition, the legally responsible person shall be consulted before the proposed transfer. If the transfer is completed before the judicial determination required in G.S. 122C-223 or 122C-232, these proceedings shall be initiated by the receiving facility. Veterans. Deleted automatic notice to next of kin. Included consent on voluntary transfers.

(d) The responsible professional may transfer a client from one facility to another for emergency medical treatment, emergency medical evaluation, or emergency surgery without notice to or consent from the client. Within a reasonable period of time the responsible professional shall notify the next of kin or the legally responsible person of the client of the transfer.

(e) When a client is transferred to another facility solely for medical reasons, the client shall be returned to the original facility when the medical care is completed unless the responsible professionals at both facilities concur that discharge of the client who is not subject to 122C-266(b) is appropriate. last part of subsection new

(f) The Commission may adopt rules to implement this section.

'§122C-207. Confidentiality.-- Court records made in all proceedings pursuant to this Article are confidential, and are not open to the general public except as provided for by G.S.122C-53 through G.S.122C-56. G.S.122-56.8 G.S.122-58.25 SC#31 Expanded to cover adults.

'§122C-208. Voluntary admission not admissible in involuntary proceeding.-- The fact that an individual has been voluntarily admitted for treatment shall not be competent evidence in an involuntary commitment proceeding. G.S.122-56.6

'Part 2. Voluntary Admissions and Discharges, Competent Adults, Facilities For the Mentally Ill and Substance Abusers.

'§122C-211. Admissions. --(a) Except as provided in subsections (b) through (e) of this section, any individual in need of treatment for mental illness or substance abuse may seek voluntary admission at any facility for the mentally ill or substance abusers by presenting himself for evaluation to the facility. No physician's statement is necessary, but a written application for evaluation or admission, signed by the individual seeking admission, is required. The application form shall be available at all times at all facilities. However, no one shall be denied admission because application forms are not available. An evaluation shall determine whether the individual is in need of care, treatment, habilitation or rehabilitation for mental illness or substance abuse or further evaluation by the facility. An individual may not be G.S. 122-56.3

accepted as a client if the facility determines that the individual does not need or cannot benefit from the care, treatment, habilitation, or rehabilitation available and that the individual is not in need of further evaluation by the facility. The facility shall give to an individual who is denied admission a referral to another facility or facilities that may be able to provide the treatment needed by the client. — last sentence CCP

(b) In 24-hour facilities the application shall acknowledge that the applicant may be held by the facility for a period of 72 hours after any written request for release that he may make, and shall acknowledge that the 24-hour facility may have the legal right to petition for involuntary commitment of the applicant during that period. At the time of application, the facility shall tell the applicant about procedures for discharge. — SC#31 Added notice re possible petition

(c) Any individual who voluntarily seeks admission to a 24-hour facility in which medical care is an integral component of the treatment shall be examined and evaluated by a physician of the facility within 24 hours of admission. The evaluation shall determine whether the individual is in need of treatment for mental illness or substance abuse or further evaluation by the facility. If the evaluating physician determines that the individual will not benefit from the treatment available, the individual shall not be accepted as a client. — partially new to differentiate between medical and non-medical facilities. SC#32

(d) Any individual who voluntarily seeks admission to any 24-hour facility, other than one in which medical care is an integral component of the treatment, shall have a medical examination within 30 days before or after admission if it is reasonably expected that he will receive treatment for more than 30 days. When applicable, this examination may be included in an examination conducted to meet the requirements of G.S.122C-223 or G.S. 122C-232.

(e) When an individual from a single portal area seeks admission to an area or State 24-hour facility, the admission shall follow the procedures as prescribed in the area plan. When an individual from a single portal area presents himself for admission to the facility directly and is in need of an emergency admission, he may be accepted for admission. The facility shall notify the area authority within 24 hours of the admission. Further planning of treatment for the client is the joint responsibility of the area authority and the facility as prescribed in the area plan. — G.S. 122-56.3

'§122C-212. Discharges. --(a) Except as provided in subsections (b) and (c) of this section, an individual who has been voluntarily admitted to a facility shall be discharged upon his own request. A request for discharge from a 24-hour facility shall be in writing. — G.S.122-56.3

(b) An individual who has been voluntarily admitted to a 24-hour facility may be held for 72 hours after his written application for

discharge is submitted.

(c) When an individual from a single portal area who has been voluntarily admitted to an area or State 24-hour facility is discharged, the discharge shall follow the procedures as prescribed in the area plan.

'Part 3. Voluntary Admissions and Discharges, Minors, Facilities for the Mentally Ill and Substance Abusers.

'§122C-221. Admissions.-- Except as otherwise provided in this Part, a minor may be admitted to a facility if the minor is mentally ill or a substance abuser and in need of treatment. The provisions of G.S.122C-211 shall apply to admissions of minors under this Part. Except as provided in G.S. 90-21.5, in applying for admission to a facility, in consenting to medical treatment when consent is required, and in any other legal procedure under this Article, the legally responsible person shall act for a minor. G.S. 122-56.5

'§122C-222. Emergency admission to a 24-hour facility.-- (a) In an emergency situation, a minor who is mentally ill or a substance abuser and in need of treatment may be admitted to a 24-hour facility upon his own written application, and the application shall serve as the initiating document for the hearing conducted in accordance with G.S. 122C-223. Within 24 hours of admission, the facility shall notify the legally responsible person of the admission unless notification is impossible due to inability to identify the legally responsible person or to inability to locate or contact him after all reasonable means to establish contact have been attempted. G.S. 122-56.5

(b) If after 30 days no legally responsible person can be located, the responsible professional shall initiate proceedings for juvenile protective services as described in Article 44 of Chapter 7A of the General Statutes in either the minor's county of residence or in the county in which the facility is located. SC#33 proceeding initiated in either county

'§122C-223. Judicial determination.--(a) When a minor is admitted to a 24-hour facility where the minor will be subjected to the same restrictions on his freedom of movement present in the State facilities for the mentally ill, or to similar restrictions, a hearing shall be held in the district court in the county in which the 24-hour facility is located within 10 days of the day that the minor is admitted to the facility. A continuance of not more than five days may be granted upon motion of: G.S. 122-56.7

(1) the court;
(2) respondent's counsel; or
(3) the responsible professional

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The Commission shall adopt rules governing procedures for admission to other 24-hour facilities not falling within the category of facilities where freedom of movement is restricted. These rules shall be designed to ensure that no minor is improperly admitted to or remains in a 24-hour facility.

(b) In any case requiring the hearing described in subsection (a) of this section, no petition is necessary. The written application for voluntary admission shall serve as the initiating document for the hearing. The court shall determine whether the minor is mentally ill or a substance abuser and is in need of further treatment at the facility. Further treatment at the facility should be undertaken only when lesser measures will be insufficient. If the court finds by clear, cogent, and convincing evidence that these requirements have been met, the court shall concur with the voluntary admission of the minor. If the court finds that these requirements have not been met, it shall order that the minor be released. A finding of dangerousness to himself or others is not necessary to support the determination that further treatment should be undertaken.

(c) When it appears that an extended period of diagnostic evaluation is necessary before a recommendation can be made to the court, the responsible professional may request a continued stay in the facility not to exceed 30 days for diagnosis and evaluation. The following procedures apply:

(1) At least 48 hours in advance of the regularly calendared hearing provided in subsection (a) of this section, the responsible professional shall give written notice to the clerk of superior court, the minor, the legally responsible person, and the attorneys for all parties that diagnosis and evaluation of the minor cannot be completed before the calendared hearing and that he will request that the court authorize a period of continued stay in the facility not to exceed 30 days for the purpose of diagnosing and evaluating the minor.

(2) The court shall determine whether there exist reasonable grounds to believe:
   a. That the minor is probably mentally ill or a substance abuser;
   b. That the minor may, upon diagnosis and evaluation, be found to meet the criteria for admission as set out in subsection (b) of this section; and
   c. That additional time is required to complete the diagnosis and evaluation.

(3) If the court finds that the criteria set out in subdivision (2) of this subsection have been met, it shall

authorize a period of continued stay in the facility for diagnosis and evaluation, not to exceed 30 days, and establish a new date for the hearing provided in subsection (a) of this section to occur by the end of the specified period. During this period, medical, psychiatric, psychological, educational, and social evaluation shall be undertaken and reasonable and appropriate medication and treatment that is consistent with accepted medical standards may be administered.

(4) If the court does not make findings of fact as set out in subdivision (2) of this subsection, the minor shall be ordered released.

(d) Unless otherwise provided in this Part, the hearing specified in subsection (a) of this section, including the provisions for representation of indigent minors, all subsequent proceedings, and conditional release are governed by the involuntary commitment procedures of Part 7 of this Article.

(e) In addition to the notice of hearings and rehearings to the minor and his counsel required under Part 7 of this Article, notice shall be given by the clerk to the legally responsible person who signed the application for voluntary admission. The legally responsible person who signed the application for voluntary admission, may also file a written waiver of his right to receive notice with the clerk of court.

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'§122C-224. Discharges.--(a) Except as provided in subsection (b) of this section, a minor shall be discharged upon his legally responsible person's request as provided in G.S.122C-212. However, a minor admitted upon his own application shall be discharged upon his own application as provided in G.S. 122C-212.

(b) After the court has concurred in the admission of a minor to a 24-hour facility as provided in G.S. 122C-223, only the facility or the court may release the minor when either determines that the minor is no longer in need of treatment at the facility. If the legally responsible person believes that release is in the best interest of the minor, and the facility refuses release, the legally responsible person may apply to the court for a hearing for discharge. G.S. 122-56.7 added last sentence SC#34

'Part 4. Voluntary Admissions and Discharges, Incompetent Adults, Facilities for theMentally Ill and Substance Abusers.

'§122C-231. Admissions.-- Except as otherwise provided in this Part an incompetent adult may be admitted to a facility when the individual is mentally ill or a substance abuser and in need of treatment. The provisions of G.S.122C-211 shall apply to admissions of an incompetent adult under G.S.122-56.7

individual, in applying for admission to a facility, in consenting to medical treatment when consent is required, in giving or receiving any legal notice, and in any other legal procedure under this Article.

'§122C-232. Judicial determination. --(a) When an incompetent adult is admitted to a 24-hour facility where the incompetent adult will be subjected to the same restrictions on his freedom of movement present in the State facilities for the mentally ill, or to similar restrictions, a hearing shall be held in the district court in the county in which the 24-hour facility is located within 10 days of the day that the incompetent adult is admitted to the facility. A continuance of not more than five days may be granted upon motion of: G.S. 122-56.7

(1) the court;
(2) respondent's counsel; or
(3) the responsible professional.

The Commission shall adopt rules governing procedures for admission to other 24-hour facilities not falling within the category of facilities where freedom of movement is restricted; these rules shall be designed to ensure that no incompetent adult is improperly admitted to or remains in a facility.

(b) In any case requiring the hearing described in subsection (a) of this section, no petition is necessary; the written application for voluntary admission shall serve as the initiating document for the hearing. The court shall determine whether the incompetent adult is mentally ill or a substance abuser and is in need of further treatment at the facility. Further treatment at the facility should be undertaken only when lesser measures will be insufficient. If the court finds by clear, cogent, and convincing evidence that these requirements have been met, the court shall concur with the voluntary admission of the incompetent adult. If the court finds that these requirements have not been met, it shall order that the incompetent adult be released. A finding of dangerousness to self or others is not necessary to support the determination that further treatment should be undertaken.

(c) Unless otherwise provided in this Part, the hearing specified in subsection (a) of this section, including the provisions for representation of indigent incompetent adults, all subsequent proceedings, and conditional release are governed by the involuntary commitment procedures of Part 7 of this Article.

(d) In addition to the notice of hearings and rehearings to the incompetent adult and his counsel required under Part 7 of this Article, notice shall be given by the clerk to the legally responsible person, or his successor. The legally responsible person, or his successor may also file with the clerk of court a written waiver of his right to receive notice.

'§122C-233. Discharges.--(a) Except as provided in subsection (b) of this section, an incompetent adult shall be discharged upon the request of the legally responsible person as provided in 122C-212. G.S.122-56.7

(b) After the court has concurred in the admission of an incompetent adult to a 24-hour facility as provided in G.S. 122C-232, only the facility or the court may release the incompetent adult at any time when either determines that the incompetent adult does not need further treatment at the facility. If the legally responsible person believes that release is in the best interest of the incompetent adult, and the facility refuses release, the legally responsible person may apply to the court for a hearing for discharge. SC#34 added last sentence

'Part 5. Voluntary Admissions and Discharges, Minors and Adults, Facilities For Individuals with Mental Retardation.

'§122C-241. Admissions.--(a) Except as provided in subsection (c) of this section an individual with mental retardation may be admitted to a facility for the mentally retarded in order that he receive care, habilitation, training, or treatment. Application for admission is made as follows: G.S. 122-70 additions CCP to differentiate legal status of an admission deleted in loco parentis

(i) A minor with mental retardation may be admitted upon application by both the father and the mother if they are living together and, if not, by the parent having custody or by the legally responsible person.

(ii) An adult with mental retardation who has been adjudicated incompetent under Chapters 33 or 35 of the General Statutes may be admitted upon application by his guardian.

(iii) An adult with mental retardation who has not been adjudicated incompetent under Chapters 33 or 35 of the General Statutes may be admitted upon his own application.

(b) The individual shall be examined and evaluated by a physician, licensed practicing psychologist or psychological associate within 24 hours of admission to a 24-hour facility. The evaluation shall determine whether the individual is mentally retarded and in need of care, habilitation, training or treatment by the facility. If the evaluating professional determines that the individual will not benefit from an admission, the individual shall not be admitted as a client. CCP Added evaluation and standard for admission.

(c) An admission to an area or State 24-hour facility of an individual from a single portal area shall follow the procedures as prescribed in the area plan When an individual from a single portal area presents himself or is presented for admission to a State facility for the mentally retarded directly and is in need of an emergency admission, he may be accepted for admission. The State facility shall notify the area authority within 24

hours of the admission and further planning of treatment for the individual is the joint responsibility of the area authority and the State facility as prescribed in the area plan.

'§122C-242. Discharges.--(a) Except as provided in subsections (b) through (d) of this section, discharges from facilities for individuals with mental retardation are made upon request of the individual authorized in G.S. 122C-241(a) to make application for admission or by the director of the facility. G.S. 122-71.1

(b) Any adult who has not been declared incompetent and who is admitted to a 24-hour facility shall be discharged upon his own request, unless the director of the facility has reason to believe that the adult is endangering himself by the discharge. In this case the individual may be held for a period not to exceed five days while the director petitions for the adjudication of incompetency of the individual and the appointment of an interim guardian under Chapters 33 or 35 of the General Statutes. SC#35 Added prov. to hold for 5 days and deleted authority to discharge at convenience of facility

(c) Any individual admitted to a 24-hour facility may be discharged when in the judgment of the director of the facility the individual is no longer in need of care, treatment, habilitation or rehabilitation by the facility or the individual will no longer benefit from the service available. In the case of an area or State facility rules adopted by the Commission or by the Secretary in accordance with G.S. 122C-63 shall be followed.

(d) When the individual to be discharged from an area or State 24-hour facility is a resident of a single portal area, the discharge shall follow the procedures described in the area plan.

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'Part 6. Involuntary Commitment -- General Provisions.

'§122C-251. Transportation.--(a) Transportation of a respondent within a county under the involuntary commitment proceedings of this Article, including admission and discharge, shall be provided by the city or county. The transportation may be by city- or county-owned vehicles or by private vehicle by contract with the city or county. If the respondent is a resident of a city, the city has the duty to provide the transportation. If the respondent is a resident of a county, and resides outside of city limits, the county has the duty to provide transportation. However, cities and counties may contract with each other to provide transportation. If a respondent resides outside of the county, the city or county in which he is taken into custody has the duty to provide transportation. If the respondent is not indigent, the city or county is entitled to recover the costs of transportation from the respondent. If the respondent is a resident of a county other than the one G.S.122-58.14 Deleted 122-41, 122-43, and 122-50

where transportation is provided and is indigent, the county of residence is responsible for the cost of transportation.

(b) Except as provided in G.S. 122C-408(b), transportation between counties under the involuntary commitment proceedings of this Article for admission shall be provided by the county where the respondent is found. Transportation between counties under the involuntary committment proceedings of this Article for discharge shall be provided by the county of residence of the respondent. Whenever the board of commissioners is satisfied that a respondent has property sufficient to pay the cost of the transportation or that some other individual liable for his support and maintenance has property sufficient to pay the cost, it may bring an action to recover the cost from the respondent, or from the individual liable for his support and maintenance. If the respondent is a resident of a county other than the one where transportation is provided and is indigent, the county of residence is responsible for the cost of transportation. G.S. 122-42

(c) The governing body of a city or county may adopt a plan for transportation of respondents in involuntary commitment proceedings in this Article. Law-enforcement personnel, volunteers, or other public or private agency personnel may be designated to provide all or parts of the transportation required by involuntary commitment proceedings. Persons so designated shall be trained and the plan shall assure adequate safety and protections for both the public and the respondent. Law enforcement, other affected agencies, and the area authority shall participate in the planning. If any person other than a law enforcement agency is designated by a city or county, the person so designated shall provide the transportation and follow the procedures in this Article. References in this Article to a law-enforcement officer apply to this person.

(d) To the extent feasible law-enforcement officers transporting respondents shall dress in plain clothes and shall travel in unmarked vehicles.

(e) In providing transportation of respondents, cities and counties shall provide a driver or attendant who is the same sex as the respondent, unless the law-enforcement officer allows a family member of the respondent to accompany the respondent in lieu of an attendant of the same sex as the respondent. G.S.122-49

(f) In providing the transportation required by this section, the law-enforcement officer or designated person may use reasonable force to restrain the respondent if it appears necessary to protect himself, the respondent, or others. No law-enforcement officer or designated person may be held criminally or civilly liable for assault, false imprisonment, or other torts or crimes on account of reasonable measures taken under the authority of this Article.

(g) Notwithstanding the provisions of subsections (a) and (b) of this

section, a clerk, a magistrate, or a district court judge where applicable may authorize the family or immediate friends of the respondent, if they so request, to transport the respondent in accordance with the procedures of this Article. This authorization shall only be granted in cases where the danger to the public, the family or friends of the respondent, or the respondent himself is not substantial. The family or immediate friends of the respondent shall bear the costs of providing this transportation.

(h) A respondent being discharged from a facility may use his own transportation.

'§122C-252. 24-hour facilities for custody and treatment of involuntary clients.-- Twenty-four hour facilities licensed under this Chapter or hospitals licensed under Chapter 131E may be designated by the Secretary as facilities for the custody and treatment of involuntary clients. Designation of these facilities shall be made in accordance with rules of the Secretary that assure the protection of the client and the general public. Facilities so designated may detain a client under the procedures of Parts 7 and 8 of this Article both before a district court hearing and after commitment of the respondent.

G.S.122-58.4(c)(1)

'§122C-253. Fees under commitment order.-- Nothing contained in Parts 7 or 8 of this Article requires a private physician or private facility to accept a respondent as a client either before or after commitment. Treatment at a private facility or by a private physician is at the expense of the respondent to the extent that the charges are not disposed of by contract between the area authority and the private facility. An area authority and its contract agencies may set and recover fees for inpatient or outpatient treatment services provided under a commitment order in accordance with G.S. 122C-146.

First sentence CCP. G.S. 122-58.8

'§122C-254. Immunity from liability.-- No facility or any of its officials, staff, or employees, or any physician or other individual who is responsible for the examination, management, supervision, treatment, and release of a respondent is civilly liable, personally or otherwise, for actions of the respondent if the facility or individuals follow accepted professional judgment, practice, and standards. This immunity is in addition to any other legal immunity from liability to which these facilities or individuals may be entitled.

G.S.122-24
G.S.122-58.8A
SC#36 expanded to cover inpatient commitments too.

'§122C-255. Housing responsibility for certain clients in or escapees from involuntary commitment.--(a) Any individual who has been involuntarily committed under the provisions of this Article to a 24-

G.S.122-58.27

hour facility:

(1) Who escapes from or is absent without authorization from the facility before being discharged; and

(2) Who is charged with a criminal offense committed after the escape or during the unauthorized absence; and

(3) Whose involuntary commitment is determined to be still valid by the judge or judicial officer who would make the pretrial release determination regarding the criminal offense under the provisions of G.S. 15A-533 and 15A-534; or

(4) Who is charged with committing a crime while still residing in the facility and whose commitment is still valid as prescribed by subdivision (3) of this section;

shall be denied pretrial release pursuant to G.S. 15A-533 and G.S.15A-534. In lieu of pretrial release, and pending the additional proceedings on the criminal offense, the individual shall be returned to the 24-hour facility in which he was residing at the time of the alleged crime or from which he escaped or absented himself for continuation of his commitment.

(b) Absent findings of lack of mental responsibility for his criminal offense or lack of competency to stand trial for the criminal offense, the involuntary commitment of an individual as described in subsection (a) of this section shall not be utilized in lieu of nor shall it constitute a bar to proceeding to trial for the criminal offense. At any time that the district court or the responsible professional of the 24-hour facility finds that the individual should be unconditionally discharged, committed for outpatient treatment, or conditionally released, the facility shall notify the clerk of superior court in the county in which the criminal charge is pending before making the change in status. At this time, a pretrial release determination pursuant to the provisions of G.S. 15A-533 and 15A-534 shall be made. In this event, arrangements for returning the individual for the pretrial release determination shall be the responsibility of the clerk of superior court.

(c) An individual who has been processed in accordance with subsections (a) and (b) of this section may not later be returned to a 24-hour facility before trial except pursuant to involuntary commitment proceedings by the district court in accordance with Parts 7 and 8 of this Article or after proceedings in accordance with the provisions of G.S. 15A-1002 or 15A-1321.

(d) Other involuntarily committed respondents who escape, but do not meet the additional criteria specified in subsection (a) of this section, are handled in accordance with the provisions of G.S. 122C-205.

'Part 7. Involuntary Commitment of the Mentally Ill and the

'§122C-261. Affidavit and petition before clerk or magistrate; custody order.--(a) Anyone who has knowledge of an individual who is: (i) mentally ill and either dangerous to himself or others or in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness, or (ii) mentally retarded and, because of an accompanying behavior disorder, is dangerous to others, may appear before a clerk or assistant or deputy clerk of superior court or a magistrate and execute an affidavit to this effect, and petition the clerk or magistrate for issuance of an order to take the respondent into custody for examination by a physician. The affidavit shall include the facts on which the affiant's opinion is based. Jurisdiction under this subsection is in the clerk or magistrate in the county where the respondent resides or is found.

G.S.122-58.3
SC#37

Added criteria for outpatient to affidavit

(b) If the clerk or magistrate finds reasonable grounds to believe that the facts alleged in the affidavit are true and that the respondent is probably (i) mentally ill and either dangerous to himself or others or in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness, or (ii) mentally retarded and, because of an accompanying behavior disorder, is dangerous to others, he shall issue an order to a law-enforcement officer or any other person authorized under G.S. 122C-251 to take the respondent into custody for examination by a physician.

(c) If the clerk or magistrate issues a custody order, he shall also make inquiry in any reliable way as to whether the respondent is indigent within the meaning of G.S. 7A-450. A magistrate shall report the result of this inquiry to the clerk.

(d) If the affiant is a physician, he may execute the affidavit before any official authorized to administer oaths. He is not required to appear before the clerk or magistrate for this purpose. His examination shall comply with the requirements of the initial examination as provided in G.S. 122C-263(c). If the physician petitioner's recommendation is for inpatient commitment and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for inpatient commitment, he shall issue an order for transportation to or custody at a 24-hour facility described in G.S. 122C-252. If a physician executes an affidavit for inpatient commitment of a respondent, a second physician shall be required to perform the examination required by G.S. 122C-266.

(e) Upon receipt of the custody order of the clerk or magistrate or a custody order issued by the court pursuant to G.S. 15A-1003 or G.S. 15A-1321, a law-enforcement officer or other person designated

in the order shall take the respondent into custody within 24 hours after the order is signed, and proceed according to GS. 122C-263.

(f) When a petition is filed for an individual who is a resident of a single portal area, the procedures for examination by a physician as set forth in G.S. 122C-263 shall be carried out in accordance with the area plan. When an individual from a single portal area is presented for commitment at a 24-hour area or State facility directly, he may be accepted for admission in accordance with G.S. 122C-266. The facility shall notify the area authority within 24 hours of the admission and further planning of treatment for the client is the joint responsibility of the area authority and the facility as prescribed in the area plan.

'§122C-262. Special emergency procedure for violent individuals.-- When an individual subject to commitment under the provisions of this Part is also violent and requires restraint and when delay in taking him to a physician for examination would likely endanger life or property, a law-enforcement officer may take the individual into custody and take him immediately before a magistrate or clerk. The law-enforcement officer shall execute the affidavit required by G.S. 122C-261 and in addition shall swear that the respondent is violent and requires restraint and that delay in taking the respondent to a physician for an examination would endanger life or property. G.S.122-58.1

If the clerk or magistrate finds by clear, cogent, and convincing evidence that the facts stated in the affidavit are true, that the respondent is in fact violent and requires restraint, and that delay in taking the respondent to a physician for an examination would endanger life or property, he shall order the law-enforcement officer to take the respondent directly to a 24-hour facility described in G.S.122C-252.

Respondents received at a 24-hour facility under the provisions of this section shall be examined and processed thereafter in the same way as all other respondents under this Part.

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'§122C-263. Duties of law-enforcement officer; first examination by physician.--(a) Without unnecessary delay after assuming custody, the law-enforcement officer or the individual designated by the clerk or magistrate under G.S. 122C-251(g) to provide transportation shall take the respondent to an area facility for examination by a physician; if a physician is not available in the area facility, he shall take the respondent to any physician locally available. If a physician is not immediately available, the respondent may be temporarily detained in an area facility, if one is available; if an area facility is not available, he may be detained under appropriate supervision in his home, in a private hospital or a clinic, in a general hospital, or in a State facility for the G.S.122-58.4

mentally ill, but not in a jail or other penal facility.

(b) The examination set forth in subsection (a) of this section is not required if:

(1) The affiant who obtained the custody order is a physician;

(2) The custody order states that the respondent was charged with a violent crime, including a crime involving assault with a deadly weapon, and he was found not guilty by reason of insanity or incapable of proceeding; or

(3) The respondent is in custody under the special emergency procedure described in G.S. 122C-262.

In any of these cases, the law-enforcement officer shall take the respondent directly to a 24-hour facility described in G.S.122C-252.

(c) The physician described in subsection (a) of this section shall examine the respondent as soon as possible, and in any event within 24 hours, after the respondent is presented for examination. The examination shall include but is not limited to an assessment of the respondent's:

(1) Current and previous mental illness or mental retardation including, if available, previous treatment history;

(2) Dangerousness to himself or others as defined in G.S. 122C-3(13);

(3) Ability to survive safely without inpatient commitment, including the availability of supervision from family, friends or others; and

(4) Capacity to make an informed decision concerning treatment.

(d) After the conclusion of the examination the physician shall make the following determinations:

(1) If the physician finds that:

a. The respondent is mentally ill;

b. The respondent is capable of surviving safely in the community with available supervision from family, friends, or others;

c. Based on the respondent's treatment history, the respondent is in need of treatment in order to prevent further disability or deterioration which would predictably result in dangerousness as defined by G.S. 122C-3(13); and

d. His current mental status or the nature of his illness limits or negates his ability to make an informed decision to seek voluntarily or comply with recommended

treatment;
the physician shall so show on the physician's examination report and shall recommend outpatient commitment. In addition the examining physician shall show the name, address, and telephone number of the proposed outpatient treatment physician or center. The person designated in the order to provide transportation shall return the respondent to his regular residence or to the home of a consenting individual, and he shall be released from custody.

(2) If the physician finds that the respondent is mentally ill and is dangerous to himself or others, or is mentally retarded, and because of an accompanying behavior disorder, is dangerous to others, he shall recommend inpatient commitment, and he shall so show on the physician's examination report. The law-enforcement officer or other designated person shall take the respondent to a 24-hour facility described in G.S.122C-252 pending a district court hearing. If there is no area 24-hour facility and if the respondent is indigent and unable to pay for his care at a private 24-hour facility, the law-enforcement officer or other designated person shall take the respondent to a State facility for the mentally ill designated by the Commission for custody, observation, and treatment and immediately notify the clerk of superior court of his actions.

(3) If the physician finds that neither condition described in subdivisions (1) or (2) of this subsection exists, the respondent shall be released and the proceedings terminated.

(e) The findings of the physician and the facts on which they are based shall be in writing in all cases. The physician shall send a copy of the findings to the clerk of superior court by the most reliable and expeditious means. If it cannot be reasonably anticipated that the clerk will receive the copy within 48 hours of the time that it was signed, the physician shall also communicate his findings to the clerk by telephone.

(f) When outpatient commitment is recommended, the examining physician, if different from the proposed outpatient treatment physician or center, shall give the respondent a written notice listing the name, address, and telephone number of the proposed outpatient treatment physician or center and directing the respondent to appear at the address at a specified date and time. The examining physician before the appointment shall notify by telephone the designated outpatient treatment physician or center and shall send a copy of the notice and his examination report to the physician or center.

'§122C-264. Duties of clerk of superior court.--(a) Upon receipt of a physician's finding that the respondent meets the criteria of G.S. 122C-263(d)(1) and that outpatient commitment is recommended, the clerk of superior court of the county where the petition was initiated, upon direction of a district court judge, shall calendar the matter for hearing and shall notify the respondent, the proposed outpatient treatment physician or center, and the petitioner of the time and place of the hearing. The petitioner may file a written waiver of his right to notice under this subsection with the clerk of court. Combination of G.S.122-58.4, 122-58.10A(d), 122-58.20

(b) Upon receipt of a physician's finding that a respondent meets the criteria of G.S. 122C-263(d)(2) and that inpatient commitment is recommended, the clerk of superior court of the county where the 24-hour facility is located shall, after determination required by G.S. 122C-261(c) and upon direction of a district court judge, assign counsel if necessary, calendar the matter for hearing, and unless specifically waived, notify the respondent, his counsel, and the petitioner of the time and place of the hearing. The petitioner may file a written waiver of his right to notice under this subsection with the clerk of court.

(c) Notice to the respondent, required by subsections (a) and (b) of this section, shall be given as provided in G.S.1A-1, Rule 4(j) at least 72 hours before the hearing. Notice to other individuals shall be sent at least 72 hours before the hearing by first-class mail postage prepaid to the individual's last known address. changed requirement for certif. mail to first cl. 48 hours to 72 SC#38

(d) In cases described in G.S. 122C-266(b) in addition to notice required in subsections (a) and (b) of this section, the clerk of superior court shall notify the chief district judge and the district attorney in the county in which the defendant was found not guilty by reason of insanity or incapable of proceeding. The notice shall be given in the same way as the notice required by subsection (c) of this section. The judge or the district attorney may file a written waiver of his right to notice under this subsection with the clerk of court.

(e) The clerk of superior court of the county where outpatient commitment is to be supervised shall keep a separate list regarding outpatient commitment and shall prepare quarterly reports listing all active cases, the assigned supervisor, and the disposition of all hearings, supplemental hearings, and rehearings. G.S.122-58.10A(d)

(f) The clerk of superior court of the county where inpatient commitment hearings and rehearings are held shall provide all notices, send all records and maintain a record of all proceedings as required by this Part; provided that if the respondent has been committed to a 24-hour facility in a county other than his county of residence and the district court hearing is held in the county of the facility, the clerk of superior G.S.122-48

court in the county of the facility shall forward the record of the proceedings to the clerk of superior court in the county of respondent's residence, where they shall be maintained by receiving clerk.

'§122C-265. Outpatient commitment; examination and treatment pending hearing.--(a) If a respondent, who has been recommended for outpatient commitment by an examining physician different from the proposed outpatient treatment physician or center, fails to appear for examination by the proposed outpatient treatment physician or center at the designated time, the physician or center shall notify the clerk of superior court who shall issue an order to a law-enforcement officer or other person authorized under G.S. 122C-251 to take the respondent into custody and take him immediately to the treatment physician or center for evaluation. The law-enforcement officer may wait during the examination and return the respondent to his home after the examination. G.S.122-58.6A SC#39 Added last sentence

(b) The examining physician or the proposed outpatient treatment physician or center may prescribe to the respondent reasonable and appropriate medication and treatment that are consistent with accepted medical standards pending the district court hearing.

(c) In no event may a respondent released on a recommendation that he meets the outpatient commitment criteria be physically forced to take medication or forceably detained for treatment pending a district court hearing.

(d) If at any time pending the district court hearing the outpatient treatment physician or center determines that the respondent does not meet the criteria of G.S. 122C-263(d)(1), he shall release the respondent and notify the clerk of court and the proceedings shall be terminated.

(e) If a respondent becomes dangerous to himself or others pending a district court hearing on outpatient commitment, new proceedings for involuntary inpatient commitment may be initiated.

(f) If an inpatient commitment proceeding is initiated pending the hearing for outpatient commitment and the respondent is admitted to a 24-hour facility to be held for an inpatient commitment hearing, notice shall be sent by the clerk of court in the county where the respondent is being held to the clerk of court of the county where the outpatient commitment was initiated and the outpatient commitment proceeding shall be terminated.

'§122C-266. Inpatient commitment; second examination and treatment pending hearing.--(a) Except as provided in subsections (b) and (e), within 24hours of arrival at a 24-hour facility described in G.S. 122C-252, the respondent shall be examined by a physician. The examination shall include but is not limited to the assessment specified in G.S. 122C-263(c). G.S.122-58.6

(1) If the physician finds that the respondent is mentally ill and is dangerous to himself or others or is mentally retarded and, because of an accompanying behavior disorder, is dangerous to others, he shall hold the respondent at the facility pending the district court hearing.

(2) If the physician finds that the respondent meets the criteria for outpatient commitment under G.S.122C-263(d)(1), he shall show his findings on the physician's examination report, release the respondent pending the district court hearing, and notify the clerk of superior court of the county where the petition was initiated of his findings. In addition, the examining physician shall show on the examination report the name, address, and telephone number of the proposed outpatient treatment physician or center. He shall give the respondent a written notice listing the name, address, and telephone number of the proposed outpatient treatment physician or center and directing the respondent to appear at that address at a specified date and time. The examining physician before the appointment shall notify by telephone and shall send a copy of the notice and his examination report to the proposed outpatient treatment physician or center.

(3) If the physician finds that the respondent does not meet the criteria for commitment under either G.S. 122C-263(d)(1) or G.S. 122C-263(d)(2), he shall release the respondent and the proceedings shall be terminated.

(4) If the respondent is released under subdivisions (2) or (3) of this subsection, the law-enforcement officer or other person designated to provide transportation shall return the respondent to the originating county.

(b) If the custody order states that the respondent was charged with a violent crime, including a crime involving assault with a deadly weapon, and that he was found not guilty by reason of insanity or incapable of proceeding, the physician shall examine him as set forth in subsection (a) of this section. However, the physician may not release him from the facility until ordered to do so following the district court hearing.

(c) The findings of the physician and the facts on which they are based shall be in writing, in all cases. A copy of the findings shall be sent to the clerk of superior court by reliable and expeditious means.

(d) Pending the district court hearing, the physician attending the respondent may administer to the respondent reasonable and appropriate medication and treatment that is consistent with accepted medical standards. Except as provided in subsection (b) of this section, if

at any time pending the district court hearing, the attending physician determines that the respondent no longer meets the criteria of either G.S. 122C-263(d)(1) or (d)(2), he shall release the respondent and notify the clerk of court and the proceedings shall be terminated.

(e) If the 24-hour facility described in G.S. 122C-252 is the facility in which the first examination by a physician occurred and is the same facility in which the respondent is held, the second examination must occur not later than the following regular working day.

SC#40 Variation to accomodate expanded use of local inpatient facilities

'§122C-267. Outpatient commitment; district court hearing.--(a) A hearing shall be held in district court within 10 days of the day the respondent is taken into custody pursuant to G.S. 122C-261(e). Upon its own motion or upon motion of the proposed outpatient treatment physician or the respondent, the court may grant a continuance of not more than five days.

G.S.122-58.7A:1

(b) The respondent shall be present at the hearing. A subpoena may be issued to compel the respondent's presence at a hearing. The petitioner and the proposed outpatient treatment physician or his designee may be present and may provide testimony.

SC#41 Compulsory process and right to confront added

(c) Certified copies of reports and findings of physicians and medical records of previous and current treatment are admissible in evidence, but the respondent's right to confront and cross-examine witnesses and obtain a subpoena for attendance of the witnesses shall not be denied.

(d) At the hearing to determine the necessity and appropriateness of outpatient commitment, the respondent need not, but may, be represented by counsel. However, if the court determines that the legal or factual issues raised are of such complexity that the assistance of counsel is necessary for an adequate presentation of the merits or that the respondent is unable to speak for himself, the court may continue the case for not more than five days and order the appointment of counsel for an indigent respondent.

(e) Hearings may be held at the area facility in which the respondent is being treated, if it is located within the judge's judicial district, or in the judge's chambers. A hearing may not be held in a regular courtroom, over objection of the respondent, if in the discretion of a judge a more suitable place is available.

(f) The hearing shall be closed to the public unless the respondent requests otherwise.

(g) A copy of all documents admitted into evidence and a transcript of the proceedings shall be furnished to the respondent on request by the clerk upon the direction of a district court judge.

If the client is indigent, the copies shall be provided at State expense.

(h) To support an outpatient commitment order, the court is required to find by clear, cogent, and convincing evidence that the respondent meets the criteria specified in G.S. 122C-262(d)(1). The court shall record the facts which support its findings and shall show on the order the center or physician who is responsible for the management and supervision of the respondent's outpatient commitment.

'§122C-268. Inpatient commitment; district court hearing.--(a) A hearing shall be held in district court within 10 days of the day the respondent is taken into custody pursuant to G.S. 122C-261(e). A continuance of not more than five days may be granted upon motion of:

(1) the court;

(2) respondent's counsel; or

(3) the State,

sufficiently in advance to avoid movement of the respondent.

G.S.122-58.7 Added upon motion of State. SC#42

(b) The attorney, who is a member of the staff of the Attorney General assigned to one of the State's facilities for the mentally ill or the psychiatric service of North Carolina Memorial Hospital, shall represent the State's interest at commitment hearings, rehearings, and supplemental hearings held at the facility to which he is assigned under this Part.

(c) If the respondent's custody order indicates that he was charged with a violent crime, including a crime involving an assault with a deadly weapon, and that he was found not guilty by reason of insanity or incapable of proceeding, the clerk shall give notice of the time and place of the hearing as provided in G.S. 122C-264(d). The district attorney in the county in which the respondent was found not guilty by reason of insanity or incapable of proceeding may represent the State's interest at the hearing.

(d) The respondent shall be represented by counsel of his choice; or if he is indigent within the meaning of G.S. 7A-450 or refuses to retain counsel if financially able to do so, he shall be represented by counsel appointed by the court.

(e) With the consent of the court, counsel may in writing waive the presence of the respondent.

(f) Certified copies of reports and findings of physicians and previous and current medical records are admissible in evidence, but the respondent's right to confront and cross-examine witnesses and obtain a subpoena for attendance of the witnesses may not be denied.

(g) Hearings may be held in an appropriate room not used for treatment of clients at the facility in which the respondent is being treated if it is located within the judge's judicial district, or in

the judge's chambers. A hearing may not be held in a regular courtroom, over objection of the respondent, if in the discretion of a judge a more suitable place is available.

(h) The hearing shall be closed to the public unless the respondent requests otherwise.

(i) A copy of all documents admitted into evidence and a transcript of the proceedings shall be furnished to the respondent on request by the clerk upon the direction of a district court judge. If the respondent is indigent, the copies shall be provided at State expense.

(j) To support an inpatient commitment order, the court shall find by clear, cogent, and convincing evidence that the respondent is mentally ill and dangerous to himself or others or is mentally retarded and, because of an accompanying behavior disorder, is dangerous to others. The court shall record the facts that support its findings.

'§122C-269. Venue of district court hearing when respondent held at a 24-hour facility pending hearing.--(a) In all cases where the respondent is held at a 24-hour facility pending the district court hearing as provided in G.S. 122C-268, unless the respondent through counsel objects to the venue, the hearing shall be held in the county in which the facility is located. Upon objection to venue, the hearing shall be held in the county where the petition was initiated. G.S.122-58.7A

(b) An official of the facility shall immediately notify the clerk of superior court of the county in which the facility is located of a determination to hold the respondent pending hearing. That clerk shall request transmittal of all documents pertinent to the proceedings from the clerk of superior court where the proceedings were initiated. The requesting clerk shall assume all duties set forth in G.S. 122C-264. The requesting clerk shall appoint as counsel for indigent respondents the counsel provided for in G.S. 122C-261(c).

(c) Upon motion of any interested person, the venue of an initial hearing described in G.S. 122C-268(c) or a rehearing required by G.S. 122C-276(b) or G.S.122C-277(b) shall be moved to the county in which the respondent was found not guilty by reason of insanity or incapable of proceeding when the convenience of witnesses and the ends of justice would be promoted by the change.

'§122C-270. Attorneys to represent the respondent and the State.--

(a) The senior regular resident superior court judge of a judicial district in which a State facility for the mentally ill is located shall appoint an attorney licensed to practice in North Carolina as special counsel for indigent respondents who are mentally ill or mentally retarded with an accompanying behavior disorder. This special counsel shall serve G.S.122-58.12

at the pleasure of the appointing judge, may not privately practice law, and shall receive annual compensation within the salary range for assistant district attorneys as fixed by the Administrative Officer of the Courts. The special counsel shall represent all indigent respondents at all hearings, rehearings, and supplemental hearings held at the State facility and on appeals held under this Article. Special counsel shall determine indigency in accordance with G.S.7A-450(a). Indigency is subject to redetermination by the presiding judge.

(b) The State facility shall provide suitable office space for the counsel to meet privately with respondents. The Administrative Office of the Courts shall provide secretarial and clerical service and necessary equipment and supplies for the office.

(c) In the event of a vacancy in the office of special counsel, counsel's incapacity, or a conflict of interest, counsel for indigents at hearings or rehearings may be assigned by a district judge of the district. No mileage or compensation for travel time is paid to a counsel appointed pursuant to this subsection. Counsel may also be so assigned when, in the opinion of the Administrative Officer of the Courts, the volume of cases warrants.

(d) At hearings held in counties other than those designated in subsection (a) of this section, a district court judge shall appoint counsel for indigent respondents from members of the bar of the county in accordance with G.S. 122C-268(d).

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(e) Counsel assigned to represent an indigent respondent at the initial district court hearing is also responsible for perfecting and concluding an appeal, if there is one. Upon completion of an appeal, or upon transfer of the respondent to a State facility for the mentally ill, if there is no appeal, assigned counsel is discharged. If the respondent is committed to a non-State 24-hour facility, assigned counsel remains responsible for his representation until discharged by order of district court, until the respondent is unconditionally discharged from the facility, or until the respondent voluntarily admits himself to the facility. G.S.122-58.10

(f) The Attorney General may employ four attorneys, one to be assigned by him full-time to each of the State facilities for the mentally ill, to represent the State's interest at commitment hearings, rehearings and supplemental hearings held under this Article at the State facilities and to provide liaison and consultation services concerning these matters. These attorneys are subject to Chapter 126 of the General Statutes and shall also perform additional duties as may be assigned by the Attorney General. The attorney employed by the Attorney General in accordance with G.S.114-4.2(b) shall represent the State's interest at commitment hearings, rehearings and supplemental hearings held at North Carolina Memorial Hospital under this Article. G.S.122-58.24

CCP Last sentence added

'§122C-271. Disposition.--(a) If an examining physician has recommended outpatient commitment and the respondent has been released pending the district court hearing, the court may make one of the following dispositions: G.S.122-58.8

(1) If the court finds by clear, cogent, and convincing evidence that the respondent is mentally ill; that he is capable of surviving safely in the community with available supervision from family, friends, or others; that based on respondent's treatment history, the respondent is in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness as defined in G.S. 122C-3(13); and that the respondent's current mental status or the nature of his illness limits or negates his ability to make an informed decision to seek voluntarily or comply with recommended treatment, it may order outpatient commitment for a period not in excess of 90 days.

(2) If the court does not find that the respondent meets the criteria of commitment set out in subdivision (1) of this subsection, the respondent shall be discharged and the facility at which he was last a client so notified.

(b) If the respondent has been held in a 24-hour facility pending the district court hearing, the court may make one of the following dispositions:

(1) If the court finds by clear, cogent, and convincing evidence that the respondent is mentally ill; that he is capable of surviving safely in the community with available supervision from family, friends, or others; that based on respondent's treatment history, the respondent is in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness as defined by G.S. 122C-3(13); and that the respondent's current mental status or the nature of his illness limits or negates his ability to make an informed decision voluntarily to seek or comply with recommended treatment, it may order outpatient commitment for a period not in excess of 90 days. If the commitment proceedings were initiated as the result of the respondent's being charged with a violent crime, including a crime involving an assault with a deadly weapon, and the respondent was found not guilty by reason of insanity or incapable of proceeding, the commitment order shall so show.

(2) If the court finds by clear, cogent, and convincing evidence that the respondent is mentally ill and is dangerous to himself or others or is mentally retarded and, because of an accompanying behavior disorder, is dangerous to others, it may order inpatient commitment at a 24-hour facility described in G.S.122C-252, or a combination of inpatient and outpatient commitment at both a 24-hour facility and an outpatient treatment physician or center, for a period not in excess of 90 days. However, an individual who is mentally retarded and, because of an accompanying behavior disorder, is dangerous to others may not be committed to a State, area or private facility for the mentally retarded. If the commitment proceedings were initiated as the result of the respondent's being charged with a violent crime, including a crime involving an assault with a deadly weapon, and the respondent was found not guilty by reason of insanity or incapable of proceeding, the commitment order shall so show. If the court orders inpatient commitment for a respondent who is under an outpatient commitment order, the outpatient commitment is terminated; and the clerk of the superior court of the county where the district court hearing is held shall send a notice of the inpatient commitment to the clerk of superior court where the outpatient commitment was being supervised.

(3) If the court does not find that the respondent meets either of the commitment criteria set out in subdivisions (1) and (2) of this subsection, the respondent shall be discharged, and the facility in which he was last a client so notified.

(4) Before ordering any outpatient commitment, the court shall make findings of fact as to the availability of outpatient treatment. The court shall also show on the order the outpatient treatment physician or center who is to be responsible for the management and supervision of the respondent's outpatient commitment. When an outpatient commitment order is issued for a respondent held in a 24-hour facility, the court may order the respondent to be held at the facility for no more than 72 hours in order for the facility to notify the designated outpatient treatment physician or center of the treatment needs of the respondent. The clerk of court in the county where the facility is located shall send a copy of the outpatient commitment order to the designated outpatient treatment physician or center. If the

outpatient commitment will be supervised in a county other than the county where the commitment originated, the court shall order venue for further court proceedings to be transferred to the county where the outpatient commitment will be supervised. Upon an order changing venue, the clerk of superior court in the county where the commitment originated shall transfer the file to the clerk of superior court in the county where the outpatient commitment is to be supervised.

'§122C-272. Appeal.-- Judgment of the district court is final. Appeal may be had to the Court of Appeals by the State or by any party on the record as in civil cases. Appeal does not stay the commitment unless so ordered by the Court of Appeals. The Attorney General represents the State's interest on appeal. The district court retains limited jurisdiction for the purpose of hearing all reviews, rehearings, or supplemental hearings allowed or required under this Part.

G.S.122-58.9 Added authority for State to appeal. SC#43

'§122C-273. Duties for follow-up on commitment order.--(a) If the commitment order directs outpatient treatment, the outpatient treatment physician may prescribe or administer to the respondent reasonable and appropriate medication and treatment that are consistent with accepted medical standards.

G.S.122-58.10A

(1) If the respondent fails to comply or clearly refuses to comply with all or part of the prescribed treatment, the physician or his designee shall make all reasonable effort to solicit the respondent's compliance. These efforts shall be documented and reported to the court with a request for a supplemental hearing.

(2) If the respondent fails to comply, but does not clearly refuse to comply, with all or part of the prescribed treatment after reasonable effort to solicit the respondent's compliance, the physician or his designee may request the court to order the respondent taken into custody for the purpose of examination. Upon receipt of this request, the clerk shall issue an order to a law-enforcement officer to take the respondent into custody and to take him immediately to the designated outpatient treatment physician or center for examination. The law-enforcement officer shall turn the respondent over to the custody of the physician or center who shall conduct the examination and then release the respondent. The law-enforcement officer may wait during the exami-

SC#39 officer may wait. SC#44 allow this exam to be used as 1st exam.

nation and return the respondent to his home after the examination. An examination conducted under this subsection in which a physician determines that the respondent meets the criteria for inpatient committment may be substituted for the first examination required by G.S. 122C-263 if the clerk or magistrate issues a custody order within six hours after the examination was performed.

(3) In no case may the respondent be physically forced to take medication or forceably detained for treatment unless he poses an immediate danger to himself or others. In such cases inpatient commitment proceedings shall be initiated.

(4) At any time that the outpatient treatment physician finds that the respondent no longer meets the criteria set out in G.S. 122C-263(d)(1), the physician shall so notify the court and the case shall be terminated; provided, however, if the respondent was initially committed as a result of conduct resulting in his being charged with a violent crime, including a crime involving an assault with a deadly weapon, and the respondent was found not guilty by reason of insanity or incapable of proceeding, the designated outpatient treatment physician or center shall notify the clerk that discharge is recommended. The clerk shall calendar a supplemental hearing as provided in G.S. 122C-274 to determine whether the respondent meets the criteria for outpatient commitment.

(5) Any individual who has knowledge that a respondent on outpatient commitment has become dangerous to himself or others as defined by G.S. 122C-3(13) may initiate a new petition for inpatient commitment as provided in this Part. If the respondent is committed as an inpatient, the outpatient commitment shall be terminated and notice sent by the clerk of court in the county where the respondent is committed as an inpatient to the clerk of court of the county where the outpatient commitment is being supervised.

(b) If the respondent on outpatient commitment intends to move or moves to another county within the State, the designated outpatient treatment physician or center shall request that the clerk of court in the county where the outpatient commitment is being supervised calendar a supplemental hearing.

(c) If the respondent moves to another state or to an unknown location, the designated outpatient treatment physician or center shall notify the clerk of superior court of the county where the outpatient

Added "or to an unknown location" SC#45

commitment is supervised and the outpatient commitment shall be terminated.

(d) If the commitment order directs inpatient treatment, the physician attending the respondent may administer to the respondent reasonable and appropriate medication and treatment that are consistent with accepted medical standards. The attending physician shall release or discharge the respondent in accordance with G.S. 122C-277. G.S.122-58.10A

'§122C-274. Supplemental hearings.--(a) Upon receipt of a request for a supplemental hearing, the clerk shall calendar a hearing to be held within 14 days and notify, at least 72 hours before the hearing, the petitioner, the respondent, his attorney, if any, and the designated outpatient treatment physician or center. The respondent shall be notified at least 72 hours before the hearing by personally serving on him an order to appear. Other persons shall be notified as provided in G.S. 122C-264(c). G.S.122-58.10B Notice changed from 48 to 72 hrs SC#38

(b) The procedures for the hearing shall follow G.S. 122C-267.

(c) In supplemental hearings for alleged noncompliance, the court shall determine whether the respondent has failed to comply and, if so, the causes for noncompliance. If the court determines that the respondent has failed or refused to comply it may:

(1) Upon finding probable cause to believe that the respondent is mentally ill and dangerous to himself or others, order an examination by the same or different physician as provided in G.S. 122C-263(c) in order to determine the necessity for continued outpatient or inpatient commitment;
(2) Reissue or change the outpatient commitment order in accordance with G.S. 122C-271; or
(3) Discharge the respondent from the order and dismiss the case.

(d) At the supplemental hearing for a respondent who has moved or intends move to another county, the court shall determine if the respondent meets the criteria for outpatient commitment set out in G.S. 122C-263(d)(1). If the court determines that the respondent no longer meets the criteria for outpatient commitment, it shall discharge the respondent from the order and dismiss the case. If the court determines that the respondent continues to meet the criteria for outpatient commitment, it shall continue the outpatient commitment but shall designate a physician or center at the respondent's new residence to be responsible for the management or supervision of the respondent's outpatient commitment. The court shall order the respondent to appear for treatment at the address of the newly designated outpatient treatment physician or center and shall order venue for further court proceedings under the outpatient commitment to be transferred to the new county of supervision. Upon an order changing venue, G.S.122-58.10A(c)

the clerk of court in the county where the outpatient commitment has been supervised shall transfer the records regarding the outpatient commitment to the clerk of court in the county where the commitment will be supervised. Also, the clerk of court in the county where the outpatient commitment has been supervised shall send a copy of the court's order directing the continuation of outpatient treatment under new supervision to the newly designated outpatient treatment physician or center.

(e) At any time during the term of an outpatient commitment order, a respondent may apply to the court for a supplemental hearing for the purpose of discharge from the order. The application shall be made in writing by the respondent to the clerk of superior court of the county where the outpatient commitment is being supervised. At the supplemental hearing the court shall determine whether the respondent continues to meet the criteria specified in G.S. 122C-263(d)(1). The court may either reissue or change the commitment order or discharge the respondent and dismiss the case.

last sentence added for clarification

(f) At supplemental hearings requested pursuant to G.S.122C-277(a) for transfer from inpatient to outpatient commitment, the court shall determine whether the respondent meets the criteria for either inpatient or outpatient commitment. If the court determines that the respondent continues to meet the criteria for inpatient commitment, it shall order the continuation of the original commitment order. If the court determines that the respondent meets the criteria for outpatient commitment, it shall order outpatient commitment for a period of time not in excess of 90 days. If the court finds that the respondent does not meet either criteria, the respondent shall be discharged and the case dismissed.

Added for clarification. SC#46 allows such order to begin new 90 day period

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'§122C-275. Outpatient commitment; rehearings.--(a) 15 days before the end of the initial or subsequent periods of outpatient commitment if the outpatient treatment physician determines that the respondent continues to meet the criteria specified in G.S. 122C-263(d)(1), he shall so notify the clerk of superior court of the county where the outpatient commitment is supervised. If the respondent no longer meets the criteria, the physician shall so notify the clerk who shall dismiss the case; provided, however, if the respondent was initially committed as a result of conduct resulting in his being charged with a violent crime, including a crime involving an assault with a deadly weapon, and the respondent was found not guilty by reason of insanity or incapable of proceeding, the physician shall notify the clerk that discharge is recommended. The clerk, at least 10 days before the end of the commitment period, on order of the district court, shall calendar the rehearing.

G.S.122-58.11A

(b) Notice and procedures of rehearings are governed by the same procedures as initial hearings, and the respondent has the same rights

he had at the initial hearing including the right to appeal.

(c) If the court finds that the respondent no longer meets the criteria of G.S. 122C-263(d)(1), it shall unconditionally discharge him. A copy of the discharge order shall be furnished by the clerk to the designated outpatient treatment physician or center. If the respondent continues to meet the criteria of G.S. 122C-263(d)(1), the court may order outpatient commitment for an additional period not in excess of 180 days.

'§122C-276. Inpatient commitment; rehearings.--(a) 15 days before the end of the initial inpatient commitment period if the attending physician determines that commitment of a respondent beyond the initial period will be necessary, he shall so notify the clerk of superior court of the county in which the facility is located. The clerk, at least 10 days before the end of the initial period, on order of a district court judge of the judicial district in which the facility is located, shall calendar the rehearing. If the respondent was initially committed as the result of conduct resulting in his being charged with a violent crime, including a crime involving an assault with a deadly weapon, and respondent was found not guilty by reason of insanity or incapable of proceeding, the clerk shall also notify the chief district court judge, the clerk of superior court, and the district attorney in the county in which the respondent was found not guilty by reason of insanity or incapable of proceeding of the time and place of the hearing. G.S.122-58.11

(b) 15 days before the end of the initial treatment period of a respondent who was initially committed as a result of conduct resulting in his being charged with a violent crime, including a crime involving an assault with a deadly weapon, having been found not guilty by reason of insanity or incapable of proceeding, if the attending physician determines that commitment of the respondent beyond the initial period will not be necessary, he shall so notify the clerk of superior court who shall schedule a rehearing as provided in subsection (a) of this section.

(c) Subject to the provisions of G.S.122C-269(c), rehearings shall be held at the facility in which the respondent is receiving treatment. The judge is a judge of the district court of the judicial district in which the facility is located or a district court judge temporarily assigned to that district.

(d) Notice and proceedings of rehearings are governed by the same procedures as initial hearings and the respondent has the same rights he had at the initial hearing including the right to appeal.

(e) At rehearings the court may make the same dispositions authorized in G.S. 122C-271(b) except a second commitment order may be for an additional period not in excess of 180 days.

(f) 15 days before the end of the second commitment period and annually thereafter, the attending physician shall review and evaluate the condition of each respondent; and if he determines that a respondent is in continued need of inpatient commitment or, in the alternative, in need of outpatient commitment, or a combination of both, he shall so notify the respondent, his counsel, and the clerk of superior court of the county in which the facility is located. Unless the respondent through his counsel files with the clerk a written waiver of his right to a rehearing, the clerk, on order of a district court judge of the district in which the facility is located, shall calendar a rehearing for not later than the end of the current commitment period. The procedures and standards for the rehearing are the same as for the first rehearing. No third or subsequent inpatient recommitment order shall be for a period longer than one year.

(g) At any rehearings the court has the option to order outpatient commitment for a period not in excess of 180 days in accordance with the criteria specified in G.S. 122C-263(d)(1) and following the procedures as specified in this Article.

'§122C-277. Release and conditional release; judicial review.-- G.S.122-58.13

(a) Except as provided in subsection (b) of this section, the attending physician shall discharge a committed respondent unconditionally at any time he determines that the respondent is no longer in need of inpatient commitment. However, if the attending physician determines that the respondent meets the criteria for outpatient commitment as defined in G.S. 122C-263(d)(1), he may request the clerk to calendar a supplemental hearing to determine whether an outpatient commitment order shall be issued. Except as provided in subsection (b) of this section, the attending physician may also release a respondent conditionally for periods not in excess of 30 days on specified medically appropriate conditions. Violation of the conditions is grounds for return of the respondent to the releasing facility. A law-enforcement officer, on request of the attending physician, shall take a conditional releasee into custody and return him to the facility in accordance with G.S. 122C-205. Notice of discharge and of conditional release shall be furnished to the clerk of superior court of the county of commitment and of the county in which the facility is located.

(b) If the respondent was initially committed as the result of conduct resulting in his being charged with a violent crime, including a crime involving an assault with a deadly weapon, and respondent was found not guilty by reason of insanity or incapable of proceeding, 15 days before the respondent's discharge or conditional release the attending physician shall notify the clerk of superior court of the county in which the facility is located of his determination regarding the proposed discharge or conditional release. The clerk shall then schedule a rehearing

to determine the appropriateness of respondent's release under the standards of commitment set forth in G.S. 122C-271(b). The clerk shall give notice as provided in G.S. 122C-264(d). The district attorney of the district where respondent was found not guilty by reason of insanity or incapable of proceeding may represent the State's interest at the hearing.

(c) If a committed respondent under either subsection (a) or (b) of this section is from a single portal area, the attending physician shall plan jointly with the area authority as prescribed in the area plan before discharging or releasing the respondent.

'Part 8. Involuntary Commitment of Substance Abusers, Facilities for Substance Abusers.

'§122C-281. Affidavit and petition before clerk or magistrate; custody order.--(a) Any individual who has knowledge of a substance abuser who is dangerous to himself or others may appear before a clerk or assistant or deputy clerk of superior court or a magistrate, execute an affidavit to this effect, and petition the clerk or magistrate for issuance of an order to take the respondent into custody for examination by a physician. The affidavit shall include the facts on which the affiant's opinion is based. Jurisdiction under this subsection is in the clerk or magistrate in the county where the respondent resides or is found. G.S.122-58.3

(b) If the clerk or magistrate finds reasonable grounds to believe that the facts alleged in the affidavit are true and that the respondent is probably a substance abuser and dangerous to himself or others, he shall issue an order to a law-enforcement officer or any other person authorized by G.S. 122C-251 to take the respondent into custody for examination by a physician.

(c) If the clerk or magistrate issues a custody order, he shall also make inquiry in any reliable way as to whether the respondent is indigent within the meaning of G.S.7A-450. A magistrate shall report the result of this inquiry to the clerk.

(d) If the affiant is a physician, he may execute the affidavit before any official authorized to administer oaths. He is not required to appear before the clerk or magistrate for this purpose. His examination shall comply with the requirements of the initial examination as provided in G.S. 122C-283(c). If the physician petitioner's recommendation is for commitment and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for commitment, he shall issue an order for transportation to or custody at a 24-hour facility or release the respondent, pending hearing, as described in G.S.122C-283(d)(1). If a physician executes an affidavit for commitment of a respondent, a second qualified professional shall perform the examination required by

G.S. 122C-285.

(e) Upon receipt of the custody order of the clerk or magistrate, a law-enforcement officer or other person designated in the order shall take the respondent into custody within 24 hours after the order is signed.

(f) When a petition is filed for an individual who is a resident of a single portal area, the procedures for examination by a physician as set forth in G.S. 122C-283(c) shall be carried out in accordance with the area plan. When an individual from a single portal area is presented for commitment at a facility directly, he may be accepted for admission in accordance with G.S. 122C-285. The facility shall notify the area authority within 24 hours of admission and further planning of treatment for the individual is the joint responsibility of the area authority and the facility as prescribed in the area plan.

'§122C-282. Special emergency procedure for violent individuals.-- When an individual subject to commitment under the provisions of this Part is also violent and requires restraint and when delay in taking him to a physician for examination would likely endanger life or property, a law-enforcement officer may take the person into custody and take him immediately before a magistrate or clerk. The law-enforcement officer shall execute the affidavit required by G.S. 122C-281 and in addition shall swear that the respondent is violent and requires restraint and that delay in taking the respondent to a physician for an examination would endanger life or property. G.S.122-58.18

If the clerk or magistrate finds by clear, cogent, and convincing evidence that the facts stated in the affidavit are true, that the respondent is in fact violent and requires restraint, and that delay in taking the respondent to a physician for an examination would endanger life or property, he shall order the law-enforcement officer to take the respondent directly to a 24-hour facility described in G.S.122C-252.

Respondents received at a 24-hour facility under the provisions of this section shall be examined and processed thereafter in the same way as all other respondents under this Part.

'§122C-283. Duties of law-enforcement officer; first examination by physician.--(a) Without unnecessary delay after assuming custody, the law-enforcement officer or the individual designated by the clerk or magistrate under G.S.122C-251(g) to provide transportation shall take the respondent to an area facility for examination by a physician; if a physician is not available in the area facility, he shall take the respondent to any physician locally available. If a physician is not immediately available, the respondent may be temporarily detained in an area facility if one is available; if an area facility is not available, G.S.122-58.4

he may be detained under appropriate supervision, in his home, in a private hospital or a clinic, or in a general hospital, but not in a jail or other penal facility.

(b) The examination set forth in subsection (a) of this section is not required if:

(1) The affiant who obtained the custody order is a physician; or

(2) The respondent is in custody under the special emergency procedure described in G.S. 122C-282.

In these cases when it is recommended that the respondent be detained in a 24-hour facility, the law-enforcement officer shall take the respondent directly to a 24-hour facility described in G.S.122C-252.

(c) The physician described in subsection (a) of this section shall examine the respondent as soon as possible, and in any event within 24 hours, after the respondent is presented for examination. The examination shall include but is not limited to an assessment of the respondent's:

(1) Current and previous substance abuse including, if available, previous treatment history; and

(2) Dangerousness to himself or others as defined in G.S. 122C-3(13);

(d) After the conclusion of the examination the physician shall make the following determinations: — SC#47 Physician determines criteria met - decides out or in-patient

(1) If the physician finds that the respondent is a substance abuser and is dangerous to himself or others, he shall recommend commitment and whether the respondent should be released or be held at a 24-hour facility pending hearing and shall so show on the physician's examination report. Based on the physician's recommendation the law-enforcement officer or other designated individual shall take the respondent to a 24-hour facility described in G.S.122C-252 or release the respondent.

(2) If the physician finds that the condition described in subdivision (1) of this subsection does not exist, the respondent shall be released and the proceedings terminated.

(e) The findings of the physician and the facts on which they are based shall be in writing in all cases. A copy of the findings shall be sent to the clerk of superior court by the most reliable and expeditious means. If it cannot be reasonably anticipated that the clerk will receive the copy within 48 hours of the time that it was signed, the physician shall also communicate his findings to the clerk by telephone.

'§122C-284. Duties of clerk of superior court.--(a) Upon receipt of a physician's finding that a respondent is a substance abuser — G.S.122-58.5

and dangerous to himself or others and that commitment is recommended, the clerk of superior court of the county where the facility is located, if the respondent is held in a 24-hour facility, or the clerk of superior court where the petition was initiated shall upon direction of a district court judge assign counsel, calendar the matter for hearing, and notify the respondent, his counsel, and the petitioner of the time and place of the hearing. The petitioner may file a written waiver of his right to notice under this subsection with the clerk of court.

(b) Notice to the respondent required by subsection (a) of this section shall be given as provided in G.S.1A-1, Rule 4(j) at least 72 hours before the hearing. Notice to other individuals shall be given by mailing at least 72 hours before the hearing a copy by first-class mail postage prepaid to the individual at his last known address.

Procedure for notice chngd. from 48 to 72 hrs. SC#38

(c) Upon receipt of notice that transportation is necessary to take a committed respondent to a 24-hour facility pursuant to G.S. 122C-290(b), the clerk shall issue a custody order for the respondent.

(d) The clerk of superior court shall upon the direction of a district court judge calendar all hearings, supplemental hearings, and rehearings and provide all notices required by this Part.

'§122C-285. Commitment; second examination and treatment pending hearing.--(a) Within 24 hours of arrival at a 24-hour facility described in G.S. 122C-252, the respondent shall be examined by a qualified professional. The examination shall include the assessment specified in G.S. 122C-283(c). If the qualified professional finds that the respondent is a substance abuser and is dangerous to himself or others, he shall hold and treat the respondent at the facility or designate other treatment pending the district court hearing. If the qualified professional finds that the respondent does not meet the criteria for commitment under G.S. 122C-283(d)(1), he shall release the respondent. In this case the reasons for the release shall be reported in writing to the clerk of superior court of the county in which the custody order originated. If the respondent is released, the law-enforcement officer or other person designated to provide transportation shall return the respondent to the originating county.

G.S.122-58.6

Added required justification for release SC#39

SC#48 2nd exam may be done by qualified professn'l

'§122C-286. Commitment; district court hearing.--(a) A hearing shall be held in district court within 10 days of the day the respondent is taken into custody. Upon its own motion or upon motion of the responsible professional, the respondent, or the State, the court may grant a continuance of not more than five days.

G.S.122-58.7A:1 Added State's motion. CONS w/SC#42

(b) The respondent shall be present at the hearing. A subpoena may be issued to compel the respondent's presence at a hearing upon failure

Compulsory process added. CONS

to attend the first scheduled hearing. The petitioner and the responsible professional of the area authority or the proposed treating physician or his designee may be present and may provide testimony. w/SC#41

(c) Certified copies of reports and findings of physicians and medical records of previous and current treatment are admissible in evidence, but the respondent's right to confront and cross-examine witnesses shall not be denied.

(d) The respondent may be represented by counsel of his choice. If the respondent is indigent within the meaning of G.S.7A-450, the court shall appoint counsel to represent him. Deleted right to waive counsel SC#49

(e) Hearings may be held at an area facility or a private facility if it is located within the judge's judicial district or in the judge's chambers. A hearing may not be held in a regular courtroom, over objection of the respondent, if in the discretion of a judge a more suitable place is available.

(f) The hearing shall be closed to the public unless the respondent requests otherwise.

(g) A copy of all documents admitted shall be furnished by the clerk to the respondent on request. If the respondent is indigent, the copies shall be provided at State expense. Made consistent with Part 7

(h) To support a commitment order, the court shall find by clear, cogent, and convincing evidence that the respondent meets the criteria specified in G.S. 122C-283(d)(1). The court shall record the facts that support its findings and shall show on the order the area authority or physician who is responsible for the management and supervision of the respondent's treatment.

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'§122C-287. Disposition.-- The court may make one of the following dispositions: G.S.122-58.8 SC#50 Committment to area authority rather than a facility per se. Treating profn'ls allowed to determine in or out-patient care as needed. SC#51 1st committment 180 days.

(1) If the court finds by clear, cogent, and convincing evidence that the respondent is a substance abuser and is dangerous to himself or others, it shall order for a period not in excess of 180 days commitment to and treatment by an area authority or physician who is responsible for the management and supervision of the respondent's commitment and treatment.

(2) If the court finds that the respondent does not meet the commitment criteria set out in subdivision (1) of this subsection, the respondent shall be discharged and the facility in which he was last treated so notified.

'§122C-288. Appeal.--Judgment of the district court is final. G.S.122-58.9

Appeal may be had to the Court of Appeals by the State or by any party on the record as in civil cases. Appeal does not stay the commitment unless so ordered by the Court of Appeals. The Attorney General shall represent the State's interest on appeal. The district court retains limited jurisdiction for the purpose of hearing all reviews, rehearings, or supplemental hearings allowed or required under this Part. — Added authority for State appeal SC#43

'§122C-289. Duty of assigned counsel; discharge.--Counsel assigned to represent an indigent respondent at the initial district court hearing is also responsible for perfecting and concluding an appeal. Upon completion of an appeal, assigned counsel is discharged. If the respondent is committed, assigned counsel remains responsible for his representation until discharged by order of district court or until the respondent is otherwise unconditionally discharged. — G.S.122-58.10

'§122C-290. Duties for follow-up on commitment order.--(a) The area authority or physician responsible for management and supervision of the respondent's commitment and treatment may prescribe or administer to the respondent reasonable and appropriate treatment either on an outpatient basis or in a 24-hour facility. — G.S.122-58.10A

(b) If the respondent whose treatment is provided on an outpatient basis fails to comply with all or part of the prescribed treatment after reasonable effort to solicit the respondent's compliance, the area authority or physician may have the respondent taken to a 24-hour facility described in G.S.122C-252. Transportation shall be provided as specified in G.S. 122C-251 upon notice by the area authority or physician that transportation is necessary. Prior to the placement in the 24-hour facility, a physician shall determine that treatment in the facility will benefit the respondent. If placement in a 24-hour facility is to exceed 45 consecutive days, the area authority or physician shall notify the clerk of court by the thirtieth day and request a supplemental hearing as specified in G.S. 122C-291.

(c) If the respondent intends to move or moves to another county within the State, the area authority or physician shall notify the clerk of court in the county where the commitment is being supervised and request that a supplemental hearing be calendared.

(d) If the respondent moves to another state or to an unknown location, the designated area authority or physician shall notify the clerk of superior court of the county where the commitment is supervised and the commitment shall be terminated.

'§122C-291. Supplemental hearings.--(a) Upon receipt of a request for a supplemental hearing, the clerk shall calendar a hearing to be held — G.S.122-58.10B SC#38

within 14 days and notify, at least 72 hours before the hearing, the petitioner, the respondent, his attorney, if any, and the designated area authority or physician. Notice shall be provided in accordance with G.S.122C-284(b). The procedures for the hearing shall follow G.S. 122C-286. 48 hrs changed to 72 hrs

(b) At the supplemental hearing for a respondent who has moved or may move to another county, the court shall determine if the respondent meets the criteria for commitment set out in G.S. 122C-283(d)(1). If the court determines that the respondent no longer meets the criteria for commitment, it shall discharge the respondent from the order and dismiss the case. If the court determines that the respondent continues to meet the criteria for commitment, it shall continue the commitment but shall designate an area authority or physician at the respondent's new residence to be responsible for the management or supervision of the respondent's commitment. The court shall order the respondent to appear for treatment at the address of the newly designated area authority or physician and shall order venue for further court proceedings under the commitment to be transferred to the new county of supervision. Upon an order changing venue, the clerk of court in the county where the commitment has been supervised shall transfer the records regarding the commitment to the clerk of court in the county where the commitment will be supervised. Also, the clerk of court in the county where the commitment has been supervised shall send a copy of the court's order directing the continuation of treatment under new supervision to the newly designated area authority or physician.

(c) At a supplemental hearing for a respondent to be held longer than 45 consecutive days in a 24-hour facility, the court shall determine if the respondent meets the criteria for commitment set out in G.S. 122C-283(d)(1). If the court determines that the respondent continues to meet the criteria and that further treatment in the 24-hour facility is necessary, the court may authorize continued care in the facility for not more than 90 days, after which a rehearing for the purpose of determining the need for continued care in the 24-hour facility shall be held, or the court may order the respondent released from the 24-hour facility and continued on the commitment on an outpatient basis. If the court determines that the respondent no longer meets the criteria for commitment, the respondent shall be released and his case dismissed. CONS

(d) At any time during the term of commitment order, a respondent may apply to the court for a supplemental hearing for the purpose of discharge from the order. The application shall be made in writing to the clerk of superior court. At the supplemental hearing the court shall determine whether the respondent continues to meet the criteria for commitment. The court may reissue or change the commitment order or discharge the respondent and dismiss the case.

'§122C-292. Rehearings.--(a) 15 days before the end of the initial or subsequent periods of commitment if the area authority or physician determines that the respondent continues to meet the criteria specified in G.S. 122C-283(d)(1), the clerk of superior court of the county where commitment is supervised shall be notified. The clerk, at least 10 days before the end of the commitment period, on order of the district court, shall calendar the rehearing. If the respondent no longer meets the criteria, the area authority or physician shall so notify the clerk who shall dismiss the case. G.S.122-58.11A

(b) Rehearings are governed by the same notice and procedures as initial hearings, and the respondent has the same rights he had at the initial hearing including the right to appeal.

(c) If the court finds that the respondent no longer meets the criteria of G.S. 122C-283(d)(1), it shall unconditionally discharge him. A copy of the discharge order shall be furnished by the clerk to the designated area authority or physician. If the respondent continues to meet the criteria of G.S. 122C-283(d)(1), the court may order commitment for additional periods not in excess of 365 days each.

'§122C-293. Release by area authority or physician. -- The area authority or physician as designated in the order shall discharge a committed respondent unconditionally at any time he determines that the respondent no longer meets the criteria of G.S. 122C-283(d)(1). Notice of discharge and the reasons for the release shall be reported in writing to the clerk of superior court of the county in which the commitment was ordered. §122-58.13 Added requirement for justification of release. SC#49

'§122C-294. Local Plan.-- Each area authority shall develop a local plan with local law-enforcement agencies, local courts, local hospitals, and local medical societies necessary to facilitate implementation of this Part. G.S.122-58.16

'Part 9. Public Intoxication.

'§122C-301. Assistance to an individual who is intoxicated in public; procedure for commitment to shelter or facility.-- G.S.122-65.11

(a) An officer may assist an individual found intoxicated in a public place by taking any of the following actions:

(1) The officer may direct or transport the intoxicated individual home;

(2) The officer may direct or transport the intoxicated individual to the residence of another individual willing to accept him;

(3) If the intoxicated individual is apparently in need of and apparently unable to to provide for himself food, clothing, or shelter but is not apparently in need of immediate medical care, the officer may direct or transport him to an appropriate public or private shelter facility;

(4) If the intoxicated individual is apparently in need of but apparently unable to provide for himself immediate medical care, the officer may direct or transport him to an area facility, hospital, or physician's office; or the officer may direct or transport the individual to any other appropriate health care facility; or

(5) If the intoxicated individual is apparently a substance abuser and is apparently dangerous to himself or others, the officer may proceed as provided in Part 8 of this Article. — Added for clarification

(b) In providing the assistance authorized by subsection (a) of this section, the officer may use reasonable force to restrain the intoxicated individual if it appears necessary to protect himself, the intoxicated individual, or others. No officer may be held criminally or civilly liable for assault, false imprisonment, or other torts or crimes on account of reasonable measures taken under authority of this Part.

(c) If the officer takes the action described in either subdivision (a)(3) or (a)(4) of this section, the facility to which the intoxicated individual is taken may detain him only until he becomes sober or a maximum of 24 hours. The individual may stay a longer period if he wishes to do so and the facility is able to accommodate him.

(d) Any individual who has knowledge that a person assisted to a shelter or other facility under subdivisions (a)(3) or (a)(4) of this section is a substance abuser and is dangerous to himself or others may proceed as provided in Part 8 of this Article.

'§122C-302. Cities and counties may employ officers to assist intoxicated individuals.--A city or county may employ officers to assist individuals who are intoxicated in public. Officers employed for this purpose shall be trained to give assistance to those who are intoxicated in public including the administration of first aid. An officer employed by a city or county to assist intoxicated individuals has the powers and duties set out in G.S. 122C-301 within the same territory in which criminal laws are enforced by law-enforcement officers of that city or county. — G.S.122-65.12

'§122C-303. Use of jail for care for intoxicated individual.--In addition to the actions authorized by G.S. 122C-301(a), an officer may assist an individual found intoxicated in a public place by directing or transporting that individual to a city or county jail. That action may be — G.S.122-65.13

taken only if the intoxicated individual is apparently in need of and apparently unable to provide for himself food, clothing, or shelter but is not apparently in need of immediate medical care and if no other facility is readily available to receive him. The officer and employees of the jail are exempt from liability as provided in G.S. 122C-301(b). The intoxicated individual may be detained at the jail only until he becomes sober or a maximum of 24 hours and may be released at any time to a relative or other individual willing to be responsible for his care.

'Part 10. Voluntary Admissions, Involuntary Commitments And Discharges, Inmates and Parolees, Department of Correction.

'§122C-311. Individuals on parole. -- Any individual who has been released from any correctional facility on parole is admitted, committed and discharged from facilities in accordance with the procedures specified in this Article for other individuals. G.S.122-85.1

'§122C-312. Voluntary admissions and discharges of inmates of the Department of Correction.-- Inmates in the custody of the Department of Correction may seek voluntary admission to State facilities for the mentally ill or substance abusers. The provisions of Part 2 of this Article shall apply except that an admission may be accomplished only when the Secretary and the Secretary of the Department of Correction jointly agree to the inmate's request. When an inmate is admitted he shall be discharged in accordance with the provisions of Part 2 of this Article except that an inmate who is ready for discharge, but still under a term of incarceration, shall be discharged only to an official of the Department of Correction. The Department of Correction is responsible for the security and cost of transporting inmates to and from facilities under the provisions of this section. G.S.122-56.10

'§122C-313. Inmate becoming mentally ill and dangerous to himself or others.-- (a) An inmate who becomes mentally ill and dangerous to himself or others after incarceration in any facility operated by the Department of Correction in the State is processed in accordance with Part 7 of this Article, as modified by this section, except when the provisions of Part 7 are manifestly inappropriate. A staff psychiatrist of the correctional facility shall execute the affidavit required by G.S. 122C-261 and send it to the clerk of superior court of the county in which the correctional facility is located. Upon receipt of the affidavit, the clerk shall calendar a district court hearing and notify the respondent and his counsel as required by G.S. 122C-284(a). The hearing is conducted in a district courtroom. G.S.122-85

If the judge finds by clear, cogent, and convincing evidence that the respondent is mentally ill and dangerous to himself or others, he shall order him transferred for treatment to a State facility designated by the Secretary. The judge shall not order outpatient commitment for an inmate-respondent.

(b) If the sentence of an inmate-respondent expires while he is committed to a State facility, he is considered in all respects as if he had been initially committed under Part 7 of this Article.

(c) If the sentence of an inmate-respondent has not expired, and if in the opinion of the attending physician of the State facility an inmate-respondent ceases to be mentally ill and dangerous to himself or others, he shall notify the Department of Correction which shall arrange for the inmate-respondent's return to a correctional facility.

(d) Special counsel at a State facility shall represent any inmate who becomes mentally ill and dangerous to himself or others while confined in a correctional facility in the same county, otherwise counsel is assigned in accordance with G.S. 122C-270(d).

(e) The Department of Correction is responsible for the security and cost of transporting inmates to and from State facilities under the provisions of this section. G.S.122-56.10(c)

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'Part 11. Voluntary Admissions, Involuntary Commitments And Discharges, The Psychiatric Service of North Carolina Memorial Hospital.

'§122C-321. Voluntary admissions and discharges. -- Any individual in need of treatment for mental illness or substance abuse may seek voluntary admission to the psychiatric service of North Carolina Memorial Hospital. Procedures for admission and discharge shall be made in accordance with Parts 2 through 4 of this Article. The applicant may be admitted only upon the approval of the director of the psychiatric service or his designee. G.S.122-56.4

'§122C-322. Involuntary commitments. -- (a) Except as otherwise specifically provided in this section references in Parts 6 through 8 of this Article to 24-hour facilities, outpatient treatment centers or area authorities shall include the psychiatric service of North Carolina Memorial Hospital. The psychiatric service may be used for temporary detention pending a district court hearing, for commitment of the respondent after the hearing, or as the manager and supervisor of outpatient commitment. However, no individual may be held at or committed to the psychiatric service without the prior approval of the director of the psychiatric service or 122-58.21

(b) Initial hearings, supplemental hearings, and rehearings may be held at the psychiatric service facility or at any place in Orange County where district court can be held under G.S. 7A-133. Legal counsel for the respondent at all hearings and rehearings shall be assigned from among the members of the bar of the same county in accordance with G.S. 122C-270(d).

'Part 12. Voluntary Admissions, Involuntary Commitments and Discharges, Veterans Administration Facilities.

'§122C-331. Voluntary admissions and discharges. -- Veterans in need of treatment for mental illness or substance abuse may seek voluntary admission to a facility operated by the Veterans Administration. Procedures for admission and discharge shall be made in accordance with Parts 2 and 4 of this Article. The Veterans Administration may require additional procedures not inconsistent with these Parts. CONS

'§122C-332. Involuntary commitments. -- (a) Except as otherwise specifically provided in this section, references in Parts 6 through 8 of this Article to 24-hour facilities, outpatient treatment centers, or area authorities shall include the facilities operated by the Veterans Administration. Veterans Administration facilities may be used for temporary detention pending a district court hearing, for commitment of the respondent after the hearing, or as the manager and supervisor of outpatient commitment. Eligibility of the veteran-respondent for treatment at a Veterans Administration facility and the availability of space shall be determined by the Veterans Administration in all cases before sending or committing a veteran-respondent. G.S.122-58.15

(b) Initial hearings, supplemental hearings, and rehearings for veteran-respondents may be held at the facility or at the county courthouse in the county in which the facility is located, and counsel shall be assigned from among the members of the bar of the same county in accordance with G.S. 122C-270(d).

'§122C-333. Order of another state.-- The judgment or order of commitment by a court of competent jurisdiction of another state, committing a person to the Veterans Administration or another federal agency that is located in this State shall have the same force and effect on the committed person while in this State as in the jurisdiction of the court entering the judgment or making the order. The courts of the committing state shall retain jurisdiction of the person so committed for the purpose of inquiring into the mental condition of the person, and for determining the necessity for continuance of his restraint. Consent is given to the G.S.34-16(b)

application of the law of the committing state on the authority of the chief officer of any facility of the Veterans Administration or of any institution operated in this State by any other federal agency to retain custody, transfer, parole, or discharge the committed person.

'Part 13. Voluntary Admissions, Involuntary Commitment and Discharge of Non-State Residents and the Return of North Carolina Resident Clients.

'§122C-341. Determination of residence. -- It is the responsibility of the facility to determine if a client is not a resident of the State. — G.S.122-37. This pt. is a rewrite of G.S. 122-37 through -40.1

'§122C-342. Voluntary admissions and discharges. -- A non-State resident may be admitted to and discharged from a facility on a voluntary basis in accordance with Parts 2 through 5 of this Article at his own expense. If the facility determines that the client should be returned to his own state the provisions of G.S. 122C-345 or G.S. 122C-361, as appropriate, shall apply. — CONS

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'§122C-343. Involuntary commitments. -- Involuntary commitments of non-State residents are made under the provisions of Parts 6 through 8 of this Article. If after commitment to a 24-hour facility the facility determines that the respondent needs long-term care and should be returned to his state of residence, the provisions of G.S. 122C-345 or G.S. 122C-361, as appropriate, shall apply. — G.S.122-38

'§122C-344. Citizens of other countries. -- In addition to the provisions of G.S. 122C-341 through G.S. 122C-343, if a 24-hour facility determines that a client is not a citizen of the United States, the facility shall notify the Governor of this State of the name of the client, the country and place of his residence in the country and other facts in the case as can be obtained, together with a copy of pertinent medical records. The Governor shall send the information to the Secretary of State at Washington, D.C., with the request that he tell the minister resident or plenipotentiary of the country of which the client is alleged to be a citizen. — G.S.122-40.1

'§122C-345. Return of a non-State resident client to his resident state.-- (a) Except as provided in subsection (c) of this section, it is the responsibility of the director of a facility to arrange — G.S.122-38 G.S.122-39 G.S.122-40

returning the client to his resident state is the responsibility of the client or his family.

(b) A non-State resident client of an area 24-hour facility may be transferred to a State facility in accordance with G.S. 122C-206 in order for the client to be returned to his resident state.

(c) A non-State resident client of a State facility may be returned to his resident State under procedures established under G.S.122C-346 or G.S. 122C-361. The cost of returning a client to his resident state under this subsection shall be the responsibility of the State.

'§122C-346. Authority of the Secretary to enter reciprocal agreements. -- The Secretary may enter agreements with other states for the return of non-State resident clients to their resident state and for the return of North Carolina residents to North Carolina when under treatment in another state. G.S.122-39

'§122C-347. Return of North Carolina resident clients from other states. -- North Carolina residents who are in treatment in another state may be returned to North Carolina either under an agreement authorized in G.S. 122C-346 or under the provisions of G.S. 122C-361. The cost of returning a North Carolina resident to this State is the responsibility of the sending state. Within 72 hours after admission in a State facility, a returned resident shall be evaluated. The returned resident may agree to a voluntary admission or may be released, or proceedings for an involuntary commitment under this Article may be initiated as necessary by the responsible professional in the facility. G.S.122-40 Last two sentences CCP

'§122C-348. Residency not affected. -- (a) A non-resident of this State who is under care in a 24-hour facility in this State is not considered a resident. No length of time spent in this State while a client in a 24-hour facility is sufficient to make a non-resident a resident or entitled to care or treatment. G.S.122-37 G.S.122-39

(b) A North Carolina resident who is under care and treatment in a 24-hour facility in another state shall retain his residency in North Carolina.

'Part 14. Interstate Compact on Mental Health.

'§122C-361. Compact entered into; form of Compact.--The Interstate Compact on Mental Health is hereby enacted into law and entered into by this State with all other states legally joining therein in the form substantially as follows: The contracting states solemnly agree that: G.S.122-99

ARTICLE I

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but, that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this Compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

ARTICLE II

As used in this Compact:

(a) "Sending state" shall mean a party state from which a patient is transported pursuant to the provisions of the Compact or from which it is contemplated that a patient may be so sent.

(b) "Receiving state" shall mean a party state to which a patient is transported pursuant to the provisions of the Compact or to which it is contemplated that a patient may be so sent.

(c) "Institution" shall mean any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

(d) "Patient" shall mean any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this Compact.

(e) "Aftercare" shall mean care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.

(f) "Mental illness" shall mean mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community.

(g) "Mental deficiency" shall mean mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness as defined herein.

(h) "State" shall mean any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

ARTICLE III

(a) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement or citizenship qualifications.

(b) The provisions of paragraph (a) of this Article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

(c) No state shall be obliged to receive any patient pursuant to the provisions of paragraph (b) of this Article unless the sending state has given advance notice of its intention to send the patient; furnished all available medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish; and unless the receiving state shall agree to accept the patient.

(d) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this Compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that it would be taken if he were a local patient.

(e) Pursuant to this Compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

ARTICLE IV

(a) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive aftercare or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities have responsibility for the care and treatment of the patient in the sending state shall have reason to believe that aftercare in another state would be in the best interest of the patient and would not jeopardize the public

safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such aftercare in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive aftercare or supervision in the receiving state.

(c) In supervising, treating, or caring for a patient on aftercare pursuant to the terms of this Article, a receiving state shall employ the same standards of visitation, examination, care, and treatment that it employs for similar local patients.

ARTICLE V

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape in a way reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

ARTICLE VI

The duly accredited officers of any state party to this Compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this Compact through any and all states party to this Compact, without interference.

ARTICLE VII

(a) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

(b) The sending state shall pay all costs of and incidental to the

transportation of any patient pursuant to this Compact, but any two or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

(c) No provision of this Compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(d) Nothing in this Compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this Compact.

(e) Nothing in this Compact shall be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

ARTICLE VIII

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(a) Nothing in this Compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances; provided, however, that in the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(b) The term "guardian" as used in paragraph (a) of this Article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

ARTICLE IX

(a) No provision of this Compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

(b) To every extent possible, it shall be the policy of states party to this Compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

ARTICLE X

(a) Each party state shall appoint a "Compact Administrator" who, on behalf of his state, shall act as general coordinator of activities under the Compact in his state and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the Compact by his state either in the capacity of sending or receiving state. The Compact Administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the Compact or any patient processed thereunder.

(b) The Compact Administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this Compact.

ARTICLE XI

The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned shall find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this Compact.

ARTICLE XII

This Compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party

thereto with any and all states legally joining therein.

ARTICLE XIII

(a) A state party to this Compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one year after notice thereof has been communicated officially and in writing to the governors and Compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the Compact.

(b) Withdrawal from any agreement permitted by Article VII(b) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

ARTICLE XIV

This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state party thereto, the Compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

'§122C-362. Compact Administrator.--Pursuant to the Compact, the Secretary of Human Resources is the Compact Administrator and, acting jointly with like officers of other party states, may adopt rules to carry out more effectively the terms of the Compact. The Compact Administrator shall cooperate with all departments, agencies and officers of and in the government of this State and its subdivisions in facilitating the proper administration of the Compact, of any supplementary agreement, or agreements entered into by this State. G.S.122-100

'§122C-363. Supplementary agreements.--The Compact Administrator may enter into supplementary agreements with appropriate officials of other states pursuant to Articles VII and XI of the Compact. In the event that these supplementary agreements shall require or contemplate the use of any institution or facility of this State or require or contemplate the provision G.S.122-101

of any service by this State, no such agreement shall be effective until approved by the head of the department or agency under whose jurisdiction the institution or facility is operated or whose department or agency will be charged with the rendering of this service.

'§122C-364. Financial arrangements.--The Compact Administrator, with the approval of the Director of the Budget, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this State by the Compact or by any supplementary agreement entered into under it. G.S.122-102

'§122C-365. Transfer of clients.--The Compact Administrator is directed to consult with the immediate family or legally responsible person of any proposed transferee. G.S.122-103

'§122C-366. Transmittal of copies of Part.--Copies of this Part shall, upon its approval, be transmitted by the Compact Administrator to the governor of each state, the attorney general of each state, the Administrator of General Services of the United States, and the Council of State Governments. G.S.122-104

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'Article 6.
'Special Provisions.

'Part 1. Camp Butner and Community of Butner.

'§122C-401. Use of Camp Butner Hospital authorized.--The Department may use the Camp Butner Hospital, including buildings, equipment, and land necessary for the operation of a modern up-to-date hospital for the care and treatment of the mentally ill of this State. G.S.122-92

'§122C-402. Application of State highway and motor vehicle laws at State institutions on Camp Butner reservation.--The provisions of Chapter 20 of the General Statutes relating to the use of the highways of the State and the operation of motor vehicles thereon are made applicable to the streets, alleys, and driveways on the Camp Butner reservation that are on the grounds of any State facility or any State institution operated by the Department or by the Department of Correction. Any person violating any of the provisions of Chapter 20 of the General GS122-94, expanded DHR and DOC inst. in Butner, which had been prev. interp. of sec.

Statutes in or on these streets, alleys, or driveways shall upon conviction be punished as prescribed in that Chapter. This section does not interfere with the ownership and control of the streets, alleys, and driveways on the grounds as is now vested by law in the Department.

'§122C-403. Ordinances and rules for enforcement of Part.-- The Secretary may adopt rules and ordinances necessary to enforce the provisions of this Part and to carry out its purpose and intent for the better administration of State facilities and institutions located on the Camp Butner reservation. Included may be rules:

G.S.122-95
G.S.160A-181
Makes clear that section is to protect all inst. at Butner
Language modernized to reflect 1971 enactment of CH160A

(1) To regulate the use of streets, alleys, sidewalks, bridges, and driveways and to establish parking areas.

(2) To promote the health, safety, morals, or general welfare of those residing on, occupying, renting, or using any property or facilities within its limits and those visiting and patronizing any State facility or State institution on the Camp Butner reservation by:

a. Regulating and restricting the height, number of stories, and size of buildings and other structures, the percentage of lot to be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes, to regulate markets, and prescribe at what place marketable products may be sold, and to condemn and remove all buildings or cause them to be removed at the expense of the owner, when dangerous to life, health, or other property.

b. To regulate places of amusement and entertainment, and to regulate, restrict, or prohibit the operation of pool and billiard halls, dance halls, carnivals, circuses, or any itinerant show or exhibition of any kind. Places of amusement and entertainment include coffee houses, cocktail lounges, night clubs, beer halls, and similar establishments. Any regulations shall be consistent with any permits issued by the North Carolina Alcoholic Beverage Control Commission.

c. To regulate and prohibit the running at large of horses, mules, cattle, sheep, swine, goats, chickens, and other animals and fowl of every description.

d. To prevent and abate nuisances whether on public or private property.

e. To regulate the subdivision of land. This regulation shall be in accordance with the procedures and subject to the limitations set forth in Part 2 of Article 19 of Chapter 160A of the General Statutes. In applying that Part, the Department is considered to be a city council.

Any rules adopted pursuant to this section may apply to part or all of the Camp Butner reservation.

'§122C-404. Community of Butner Planning Commission.-- (a) There is established the Community of Butner Planning Commission. NEW, but sim. to DHR Dir. 2-81 County appointees added. SC#52

(b) The Community of Butner Planning Commission shall consist of seven members, four appointed by the Secretary and three appointed by the Board of Commissioners of Granville County. All members shall reside within the Butner Fire and Police Protection District.

(c) Of the initial members, two appointments of the Secretary and two appointments of the Board of Commissioners of Granville County shall be for two-year terms beginning January 1, 1986, and the remaining appointments shall be for one-year terms beginning January 1, 1986. Upon expiration, all succeeding terms shall be two years.

(d) Members shall receive reimbursement for travel, per diem, and subsistence in accordance with Chapter 138 of the General Statutes. Expenses of the Commission under this subsection shall be paid by the Department.

(e) The Community of Butner Planning Commission shall elect a chairman and a vice-chairman from its membership for a one-year term, and shall elect a clerk for a one-year term.

(f) The initial meeting of the Community of Butner Planning Commission shall be called by the Secretary. The Commission shall establish a regular meeting schedule that provides for quarterly meetings. Special meetings may be called by the Secretary, the chairman, or on the written request of two members.

(g) The Community of Butner Planning Commission shall adopt rules for its procedures.

(h) In order to be effective on territory on the Camp Butner reservation other than the grounds of State facilities or State institutions, any ordinance or rule adopted by the Department under G.S.122C-404 shall be approved by the Community of Butner Planning Commission. Notwithstanding the requirement of approval by the Community of Butner Planning Commission under this subsection, any ordinance or rule in effect on December 31, 1985, shall continue in effect until December 31, 1986, on the areas of the Camp Butner Reservation off the grounds of State institutions, unless modified or repealed by the Secretary and the Community of Butner Planning Commission

on or before December 31, 1986.

(i) In addition to the duties prescribed by this section, the Secretary may assign other duties to the Community of Butner Planning Commission that relate to the Community of Butner or the Camp Butner reservation.

'§122C-405. Recordation of ordinances and rules; printing and distribution.--All ordinances and rules adopted under this Part shall be filed and made available in accordance with Chapter 150A of the General Statutes. G.S.122-96

'§122C-406. Violations made misdemeanor.--A person who violates an ordinance or rule adopted under this Part is guilty of a misdemeanor and is punishable by a fine, not to exceed fifty dollars ($50.00), and imprisonment, not to exceed 30 days. G.S.122-97

'§122C-407. Water and sewer system.--(a) The Department may acquire, construct, establish, enlarge, maintain, operate, and contract for the operation of a water supply and distribution system and a sewage collection and disposal system for the Camp Butner reservation. NEW SC#53

(b) These water and sewer systems may be operated for the benefit of persons and property within the Camp Butner reservation and areas outside the reservation within reasonable limitations specifically including any sanitary district or city in Durham or Granville Counties.

(c) The Department may fix and enforce water and sewer rates and charges in accordance with G.S. 160A-314 as if it were a city.

'§122C-408. Butner Public Safety Division of the Department of Crime Control and Public Safety; jurisdiction; fire and police district.--(a) The Secretary of Crime Control and Public Safety may employ special police officers for the territory of the Camp Butner reservation. The territorial jurisdiction of these special police officers shall include: (i) the Camp Butner reservation; (ii) the Lyons Station Sanitary District; and (iii) that part of Granville County adjoining the Butner reservation and the Lyons Station Sanitary District situated north and west of the intersection of Rural Paved Roads 1103 and 1106 and bounded by those roads and the boundaries of the reservation and the sanitary district. The Secretary of Crime Control and Public Safety may organize these special police officers into a public safety department for that territory and may establish it as a division within that principal department as permitted by Chapter 143B of the General Statutes. G.S.122-98

(b) After taking the oath of office required for law enforcement officers, the special police officers authorized by this section shall have the authority of deputy sheriffs of Durham and Granville Counties in

those counties respectively. Within the territorial jurisdiction stated in subsection (a) of this section, the special police officers have the primary responsibility to enforce the laws of North Carolina and any ordinance or regulation applicable to that territory adopted under authority of this Part or under G.S. 143-116.6 or G.S. 143-116.7 or under the authority granted any other agency of the State and also have the powers set forth for firemen in Articles 3, 5 and 6 of Chapter 69 of the General Statutes. Any civil or criminal process to be served on any individual confined at any State facility within the territorial jurisdiction described in subsection (a) of this section shall be forwarded by the sheriff of the county in which the process originated to the Director of the Butner Public Safety Division. Special police officers authorized by this section shall be assigned to transport any individual transferred to or from any State facility within the territorial jurisdiction described in subdivision (a) of this section to or from the psychiatric service of North Carolina Memorial Hospital.

'§122C-409. Community of Butner comprehensive emergency management. plan.-- The Department of Crime Control and Public Safety shall establish an emergency management agency as defined in G.S.166A-4(2) for the Community of Butner and the Camp Butner reservation. NEW SC#54

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'Part 2. Black Mountain Joint Security Force.

'§122C-421. Joint security force.-- The Department may designate one or more special police officers who shall make up a joint security force to enforce the law of North Carolina and any ordinance or regulation adopted pursuant to G.S. 143-116.6 or G.S.143-116.7 or pursuant to the authority granted the Department by any other law on the territory of the Black Mountain Center, the Alcohol Rehabilitation Center, and the Juvenile Evaluation Center, all in Buncombe County. These special police officers have the same powers as peace officers now vested in sheriffs within the territory embraced by the named centers. G.S.122-98.3

'Part 3. North Carolina Alcoholism Research Authority.

'§122C-431. North Carolina Alcoholism Research Authority created.-- (a) The North Carolina Alcoholism Research Authority is created and shall consist of and be governed by a nine-member board to be appointed by the Governor. Three of the members shall be appointed for a two-year term, three shall be appointed for a four-year term and three shall be appointed for a six-year term; thereafter all appointments shall G.S.122-120

be for terms of six years. Any vacancy occurring in the membership of the board shall be filled by the Governor for the unexpired term.

(b) The board shall elect one of its members as chairman and one as vice-chairman. The director of the Center for Alcohol Studies of the University of North Carolina at Chapel Hill shall serve ex-officio as executive secretary to the Authority. Board members shall receive the same per diem, subsistence, and travel allowances as members of similar State boards and commissions, provided funds are available in the 'Alcoholism Research Fund' for this purpose.

'§122C-432. Authorized to receive and spend funds.--The Authority may receive funds from State, federal, private, or other sources. These funds shall be held separately and designated as the 'Alcoholism Research Fund'. The Authority shall spend the Fund on research as to the causes and effects of alcohol abuse and alcoholism and for the training of alcohol research personnel. Expenditures for the purposes specified in this section shall be made as grants to nonprofit corporations, organizations, agencies, or institutions engaging in such research or training. The Authority may also pay necessary administrative expenses from the Fund. G.S.122-121

'§122C-433. Applications for grants; promulgation of rules.--(a) Applications for grants are processed by the Center for Alcohol Studies. All applications shall be reviewed by scientific consultants to the Center; and the Center, after review and study, shall make recommendations to the Authority as to the awarding of grants. The Center shall also furnish to the Authority clerical assistance as may be required. G.S.122-122

(b) The Authority shall adopt rules relative to applications for grants, the reviewing of grants and awarding of grants."

Sec. 3. G.S. 7A-451(a)(6) is amended by deleting "to a treatment facility under Article 5A of Chapter 122", and substituting "to a facility under Part 7 of Article 5 of Chapter 122C of the General Statutes, or a proceeding for commitment under Part 8 of Article 5 of Chapter 122C of the General Statutes".

Sec. 4. G.S. 7A-451.1 is amended by deleting "G.S. 122-58.7A", and substituting "G.S. 122C-267(d)".

Sec. 5. G.S. 7A-647(3) is amended by deleting "or local mental health director", both places those words appear.

Sec. 6. The first sentence of G.S. 14-446 is amended by deleting "an alcoholic in need of care as defined in G.S. 122-58.22 or G.S. 122-58.23", and substituting "a substance abuser and dangerous to himself or others as provided in G.S.122C-281."

Sec. 7. G.S.14-447 is amended by deleting "G.S.122-65.11" both

places it appears and substituting in both places "G.S.122C-301"

Sec. 8. G.S. 15-155.2(c) is repealed.

Sec. 9. G.S. 15A-1002(b)(2) is amended by deleting "superintendent", and substituting "director", and is further amended by deleting "Chapter 122", and substituting "Chapter 122C".

Sec. 10. G.S. 15A-1003(a) and G.S. 15A-1321 are amended:

(1) by deleting "Article 5A of Chapter 122" each time it appears and substituting "Part 7 of Article 5 of Chapter 122C";

(2) by deleting "a community or regional mental health facility pursuant to G.S. 122-58.4(b)", both places it appears and substituting, "an area facility as described in G.S. 122C-252 or a State facility for the mentally ill pursuant to G.S.122C-266(b)"; and

(3) by deleting "G.S.122-58.3 or G.S. 122-58.18", in both places it appears and substituting "G.S. 122C-261".

Sec. 11. G.S. 15A-1004(d) is amended by deleting "Chapter 122 of the General Statutes, Article 5A(Involuntary Commitment)", and substituting "Part 7 of Article 5 of Chapter 122C of the General Statutes".

Sec. 12. G.S. 15A-1322 is amended by deleting "G.S.122-36", and substituting "G.S.122C-3", and is further amended by deleting the word "imminently".

Sec. 13. G.S.33-1 is amended in the second sentence by deleting "is declared incompetent in connection with his committment to a mental hospital or"

Sec. 14. G.S. 34-16 is repealed.

Sec. 15. G.S. 35-1 is amended by deleting "inquisition", and substituting "incompetency hearing".

Sec. 16. G.S. 35-1.1 is amended by deleting "during his developmental period", and substituting, "before age 18".

Sec. 17. G.S. 35-1.7(4) is amended by adding a new sentence at the end to read: "Any individual permitted to be a guardian under G.S.122C-123 is a disinterested public agent if they have no immediate responsibilities for providing services to a ward."

Sec. 18. G.S. 35-1.7(17) is rewritten to read:

"(17) 'Mental health professional' means any individual with appropriate training or experience in the field of mental health care of the mentally ill, including physicians, practicing psychologists, psychological associates, social workers, and registered nurses as specified by the Commission for Mental Health, Mental Retardation, and Substance Abuse Services." G.S.122-36(h)

Sec. 19. G.S. 37-1.7(18) is rewritten to read:

"(18)'Mental retardation professional' means any individual G.S. 122-36(i)

with appropriate training or experience in the field of care for the mentally retarded, including practicing psychologists, psychological associates, physicians, educators, social workers, and registered nurses as specified by the Commission for Mental Health, Mental Retardation, and Substance Abuse Services."

Sec. 20. G.S. 35-1.7(23) is amended by deleting "G.S. 122-36(g) and G.S. 122-56.2(b)", and substituting "G.S.122C-3".

Sec. 21. G.S. 35-1.7(31) is amended by deleting "during the developmental period", and substituting "before age 18".

Sec. 22. G.S. 35-1.34(a) is amended by deleting "residential hospitals for the mentally ill as established and provided for by Article 1 of Chapter 122 or residential centers for the mentally retarded as established and provided for by Article 9 of Chapter 122", and substituting, "State facilities for the mentally ill or mentally retarded as established by G.S.122C-181".

Sec. 23. G.S. 35-4.1 is repealed.

Sec. 24. G.S. 35-4.2 is repealed.

Sec. 25. G.S. 35-5 is repealed.

Sec. 26. G.S. 47-15 is repealed.

Sec. 27. G.S. 51-12 is repealed.

Sec. 28. G.S.66-58(e)(7) is amended by deleting "patients" both places it appears and substituting "clients", and is further amended by deleting "institutions for the care of the blind, or mentally or physically defective", and substituting "facilities operated by the Department of Human Resources".

Sec. 29. G.S. 59-62(a)(1) is amended by deleting "declared a lunatic in any judicial proceeding", and substituting "adjudicated incompetent".

Sec. 30. G.S. 90-21.4 is amended by deleting in all three places it appears the words "or person standing in loco parentis", and substituting in each place "person standing in loco parentis, or a legal custodian when granted specific authority in a custody order to consent to medical or psychiatric treatment".

Sec. 31. G.S. 90-21.5(a) is amended by deleting "G.S. 130-81", and substituting "G.S. 130A-135", and is further amended by deleting "G.S.122-56.5", and substituting "G.S.122C-222".

Sec. 32. G.S. 90-109 is amended by deleting "G.S.122-23.2", and substituting "G.S. 122C-3(23)", and by deleting in both places "Article 1A of Chapter 122", and substituting in each place "Article 2 of Chapter 122C".

Sec. 33. G.S.105A-2(1)j. is amended by deleting "Broughton Hospital, Cherry Hospital, Dorothea Dix Hospital, John Umstead Hospital, Caswell Center at Kinston, Murdoch School, O'Berry School, Western Carolina Center,

Black Mountain Alcoholic Rehabilitation Center, Butner Alcoholic Rehabilitation Center, Walter B. Jones Alcoholic Rehabilitation Center", and substitute "State facilities as listed in G.S.122C-181(a)".

Sec. 34. G.S. 108A-101(m) is amended by deleting "G.S.122-36(n)" and substituting "G.S.122C-3(17)".

Sec. 35. G.S.108A-103(b) is amended by deleting "mental health clinics" and substituting "area mental health, mental retardation, and substance abuse authorities".

Sec. 36. G.S. 110-86(3) is amended by inserting immediately after the words "schools conducted during vacation periods;" the words "facilities licensed under Article 2 of Chapter 122C of the General Statutes;"

Sec. 37. G.S. 120-123(24) is amended by deleting "G.S.122-120", and substituting "G.S.122C-431".

Sec. 38. G.S. 126-5(a) is amended by inserting immediately after the words "not herein exempt" the phrase ", to employees of area mental health, mental retardation, and substance abuse authorities,", and is further amended by deleting the phrase ",mental health clinics".

Sec. 39. G.S. 131D-10.4(4) is amended by deleting "Treatment programs" and substituting "Licensable facilities", and is further amended by deleting "Article 1A of Chapter 122", and substituting "Article 2 of Chapter 122C".

Sec. 40. G.S. 131E-66 is repealed.

Sec. 41. G.S. 131E-76(3) is amended by deleting "G.S.122-72", and substituting "Article 2 of Chapter 122C of the General Statutes".

Sec. 42. G.S. 131E-176(14a) and G.S.131E-176(21) are each amended by deleting "Chapter 122" and substituting "Article 2 of Chapter 122C".

Sec. 43. (a) G.S.131E-176(5a), G.S.58-251.8(d), G.S.57-7.3(d), G.S.57B-12.1(d), and G.S.135-40.7A(c) are amended by deleting the words "Article 1A of General Statutes Chapter 122", and substituting "Article 1A of General Statutes Chapter 122 or Article 2 of General Statutes Chapter 122C".

(b) Effective January 1, 1988, G.S.131E-176(5a), G.S.58-251.8(d), G.S.57-7.3(d), G.S.57B-12.1(d), and G.S.135-40.7A(c) are amended by deleting the words "Article 1A of General Statutes Chapter 122".

Sec. 44. G.S. 143-475.1 is repealed.

Sec. 45. G.S. 143B-13(b)(ii) is amended by deleting "insanity", and substituting "incompetence".

Sec. 46. G.S. 143B-13(b)(x) is amended by deleting "to a hospital or sanitarium by a court of competent jurisdiction as a drug addict, a dipsomaniac, an inebriate, or a stimulant addict", and substituting "as a substance abuser under Part 8 of Article 5 of Chapter 122C of the General Statutes".

Sec. 47. G.S. 143B-147(a) is amended by deleting the phrase "and regulations", the first four times it appears.

Sec. 48. G.S. 143B-147(a)(1) is amended by deleting "establish standards and promulgate", and substituting "adopt"

Sec. 49. G.S. 143B-147(a)(1)a. is rewritten to read "Admission, including the designation of regions, treatment, and professional care of individuals admitted to any State facility as defined in G.S.122C-3, that is now or may be established."

Sec. 50. G.S. 143B-147(a)(1)b. and c. are each amended by deleting "Article 2F of Chapter 122", and substituting "Part 4 of Article 4 of Chapter 122C".

Sec. 51. G.S. 143B-147(a)(2) is amended by deleting "inspection, registration and", and is further amended by deleting "Article 1A of Chapter 122", and substituting "Article 2 of Chapter 122C".

Sec. 52. G.S. 143B-147(a)(5) is rewritten to read: "To adopt rules relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances as provided by G.S.90-100."

Sec. 53. G.S. 143B-147(a) is further amended by adding a new subdivision to read: "(6) Except where rulemaking authority is assigned under that Article to the Secretary of Human Resources, to adopt rules to implement Article 3 of Chapter 122C of the General Statutes."

Sec. 54. G.S. 143B-147(b) and (d) are each amended by deleting "and regulations".

Sec. 55. G.S. 148-19(d) and G.S. 148-22(b) are amended by inserting immediately after the words "mental health,", the words "mental retardation, substance abuse,"

Sec. 56. G.S.153A-77 is amended as follows:

(1) by deleting "is hereby authorized to", and substituting "may";
(2) by deleting "board of mental health (area)", and substituting "area mental health, mental retardation, and substance abuse board";
(3) by deleting "It is provided, however, that the board", and substituting "The board"; and
(4) by deleting "is further authorized and empowered, in the exercise of its discretion, to", and substituting "may also".

Sec. 57. G.S. 153A-149(c)(22) is amended by deleting "county or area mental health department", and substituting "area mental health, mental retardation, and substance abuse authority".

Sec. 58. G.S. 153A-247 is amended by deleting "Chapter 130", and substituting "Chapter 130A of the General Statutes", and is further amended by deleting "programs pursuant to Chapter 122", and substituting "mental retardation, and substance abuse programs pursuant to Chapter 122C of the General Statutes".

Sec. 59. G.S. 153A-249 is amended by deleting "Chapter 131", and substituting "Chapters 122C, 131 and 131E of the General Statutes".

Sec. 60. G.S.163-85(c)(6) is amended to read: "(6) that a person is disqualified to vote under G.S.122C-58 because of an unrevoked adjudication of incompetency under Chapters 33 or 35 of the General Statutes"

Sec. 61. G.S. 168-9 is amended by deleting "Chapter 122", and substituting "Chapter 122C".

Sec. 62. G.S. 168-21 is amended by deleting "G.S. 122-58.2(1)b., and substituting "G.S.122C-3(13)b.".

Sec. 63. (a) Terms used in this section have the same meaning as in Chapter 122C of the General Statutes.

(b) G.S.122C-65 and G.S.122C-66 apply only to acts or omissions occurring on or after January 1, 1986. — AG letter pt.1

(c) Where any right enumerated in G.S. 122-55.2(b) or G.S.122-55.14(b) has been restricted under G.S. 122-55.2(d) or G.S. 122-55.14(c), and the period of restriction had not expired before January 1, 1986, then such limitation shall, unless otherwise terminated, remain effective for the shorter of: — AG letter pt.2

(1) the period for which it was stated to be effective; or

(2) seven days after December 31, 1985.

(d) Because this act becomes effective at the middle of a fiscal year, the Secretary may adopt rules to implement G.S. 122C-147 for fiscal year 1985-86 to cover the transition between G.S.122-35.53 and G.S. 122C-147. — AG letter pt.4

(e) Respondents committed to a facility for a specific period of time before the effective date of Article 5 of Chapter 122C of the General Statutes are deemed to have been committed for the same period of time under that Article. — 122-58.17

(f) If any appeal under G.S.122-35.41, G.S.122-35.50, or G.S. 122-35.52 is pending on the effective date of this act, it shall be governed by the law and rules in effect at the time of the appeal. If any appeal was allowable under one of those sections, but was not taken before the effective date of this act, it shall be governed by G.S. 122C-145. — AG letter pt. 3

(g) Any person serving as a guardian under the authority of former G.S.122-24.1 shall continue to serve as guardian notwithstanding the repeal of that section.

(h) G.S.122C-255(a) through (c) applies to persons alleged to have committed crimes on or after October 1, 1981. — Sec. 3, ch 936 S.L. 1981

(i) Parts 2 through 4 of Article 5 of Chapter 122C of the General Statutes shall apply to all new admissions of voluntary clients to facilities for the mentally ill and substance abusers occurring on or after the effective date of this act. In addition, G.S. 122C-212 and G.S. 122C-224 shall apply to all voluntary clients discharged from such a facility on or after the effective date of this act. — A.G. letter pt g

(j) G.S. 122C-241 and G.S. 122C-242 shall apply to all individuals residing in facilities for individuals with mental retardation on the — A.G. letter pt h

effective date of this act, who shall be admitted and discharged in accordance with the provisions found therein, as well as to persons admitted to such a facility on or after that date.

(k) Substance abusers committed as oupatients pursuant to G.S. 122-58.7A:1 or G.S. 122-58.8 prior to the effective date of this act shall not be subject to the provisions of G.S. 122C-290 through G.S. 122C-293. If appropriate, new involuntary committment proceedings may be instituted regarding such individuals pursuant to G.S. 122C-281 through G.S. 122C-289. A.G. letter pt i

(l) Until any change is made in the size of an area board under G.S. 122C-118(a), it shall remain the same size as on December 31, 1985.

Sec. 64. Prosecutions for offenses occurring before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

Sec. 65. The provisions of this act are severable, and if any provision of this act is held invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions of this act which can be given effect without the invalid provision.

Sec. 66. This act shall become effective January 1, 1986.

Appendix I

Legislative Proposal #4

85W6-LB-4

Public

ST: Developmental Disabilities

A BILL TO BE ENTITLED

AN ACT CONCERNING SERVICES TO INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES.

Whereas, the State has established the precedent of providing human services for individuals who have disabling conditions caused by mental illness, mental retardation or substance abuse; and

Whereas, other individuals suffer severe disability from other conditions within the broad category of 'developmental disability' and these individuals have similar needs for services; and

Whereas, some service programs do exist under the aegis of the Division of Mental Health, Mental Retardation and Substance Abuse Services that could meet the service needs of some of these individuals; and

Whereas, current law does not provide for any local or State agency to plan responsively to meet the direct service needs across all life stages of these other individuals with disabilities; now therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 122-1.2 is amended by adding the following new subdivision:

"(7) The Department shall plan for the statewide delivery of services to individuals with developmental disabilities; include such planning as a part of regular budget proposals; administer special funds appropriated for these services; and monitor compliance of the area programs with G.S. 122-35.43A."

Sec. 2. Chapter 122 of the General Statutes is amended by adding a new section to read:

"§122-2.2. Definition of developmental disability.--For the purpose of this Chapter, 'Developmental disability' means a severe, chronic disability of a person which:

a. is attributable to a mental or physical impairment or combination of mental and physical impairments;

b. is manifested before the person attains age twenty-two, unless the disability is caused by a traumatic head injury and is manifested after the age 22;

c. is likely to continue indefinitely;

d. results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, capacity for independent living, learning, mobility, self-direction and economic self-sufficiency; and

e. reflects the person's need for a combination and sequence of special interdisciplinary, or generic care, treatment, or other services which are a

lifelong or extended duration and are individually planned and coordinated."

Sec. 3. Chapter 122 of the General Statutes is amended by adding the following new section:

"§122-35.43A. Services for developmentally disabled.--Area authorities shall identify needs and develop plans for meeting the needs of individuals in their catchment area with developmental disabilities; provide case management services and purchase or provide other services for clients with developmental disabilities; administer allocated funds for such purposes; and assure compliance with applicable laws and rules of all such service provision within the area."

Sec. 4. G.S. 122-36(g) is amended by adding the following new language at the end:

"For the purpose of Parts 2 and 3 of this Article only, 'treatment facility' also means any person at one location, whose primary purpose is to provide services for the care, treatment, habilitation or rehabilitation for clients with developmental disabilities."

Sec. 5. G.S. 122C-3 is amended by adding a new subdivision to read:

"(14a) 'Developmental disability' means a severe, chronic disability of a person which:

a. is attributable to a mental or physical impairment or combination of mental and physical impairments;

b. is manifested before the person attains age twenty-two, unless the disability is caused by

a traumatic head injury and is manifested after age 22;

c. is likely to continue indefinitely;

d. results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, capacity for independent living, learning, mobility, self-direction and economic self-sufficiency; and

e. reflects the person's need for a combination and sequence of special interdisciplinary, or generic care, treatment, or other services which are a lifelong or extended duration and are individually planned and coordinated."

Sec. 6. G.S. 122C-3(16) is amended by adding the following at the end:

"For the purposes of Article 3 only, 'facility' also means any person at one location, whose primary purpose is to provide services for the care, treatment, habilitation or rehabilitation for individuals with developmental disabilities."

Sec. 7. G.S. 122C-112(a)(9) is amended by adding immediately after the words "mental retardation," the words "developmental disabilities,".

Sec. 8. G.S. 122C-112(a) is amended by adding the following new subdivision:

"(9a) Plan for the statewide delivery of services to individuals with developmental disabilities; include such

planning as a part of regular budget proposals; administer special funds appropriated for these services; and monitor compliance of the area authorities with G.S. 122C-117(a)(5a);"

Sec. 9. G.S. 122C-117(a)(1) is amended by adding immediately after the words "mental retardation," the words "developmental disability,"

Sec. 10. G.S. 122C-117(a) is amended by adding a new subdivision to read:

"(5a) Identify needs and develop plans for meeting the needs of individuals in their catchment area with developmental disabilities; provide case management services and purchase or provide other services for clients with developmental disabilities; administer allocated funds for such purposes; and assure compliance with applicable laws and rules of all such service provision within the area."

Sec. 11. There is appropriated from the General Fund to the Department of Human Resources the sum of one million four hundred thousand dollars ($1,400,000) for fiscal year 1985-86 and the sum of one million six hundred twenty-five thousand dollars ($1,625,000) for fiscal year 1986-76. These funds shall be allocated as follows:

(1) For case management/planning staff for each area and region--the sum of one million one hundred twenty-five thousand dollars ($1,125,000) in fiscal year 1985-86

and the sum of one million one hundred twenty-five thousand dollars ($1,125,000) in fiscal year 1986-87.

(2) Reserve to be expended as needed for case services--the sum of two hundred seventy-five thousand dollars ($275,000) for fiscal year 1985-86 and the sum of five hundred thousand dollars ($500,000) for fiscal year 1986-87.

Sec. 12. Sections 5 through 10 of this act shall become effective January 1, 1986. Sections 1 through 4 and Section 11 of this act shall become effective July 1, 1985.

Appendix I

85W7-LF-53 Legislative Proposal #5

Public

S.T.: Services to Persons with Autism.

A BILL TO BE ENTITLED

AN ACT TO APPROPRIATE FUNDS FOR SERVICES TO PERSONS WITH AUTISM AND SIMILAR DEVELOPMENTAL DISABILITIES.

Whereas, there is a vital need for a comprehensive program plan for autistic and similarly disabled persons who have aged out of the public school system; and

Whereas, the General Assembly recognized this need and appropriated thirty-five thousand dollars ($35,000) in 1983 and thirty-five thousand dollars ($35,000) in 1984, to have the Department of Human Resources, Division of Mental Health, Mental Retardation, and Substance Abuse Services, conduct a needs assessment and design and establish such a program plan, in cooperation with the Department of Public Instruction, the Division of Vocational Rehabilitation, the North Carolina Society for Autistic Adults and Children, and Division TEACCH, established by the North Carolina General Assembly in 1972 as a statewide model program serving autistic and similarly disabled persons and located in the Medical School of the University of North Carolina at Chapel Hill; and

Whereas, comprehensive living and training communities across the nation and throughout the world have been found to be best able to provide the high level of continuing supervision and

intensive training in all skill areas that most autistic and similarly disabled persons need; and

Whereas, the needs assessment conducted by Division TEACCH in 1984 as a part of the Adolescent and Adult Autistic Program Planning Project determined that there is an immediate need for additional group homes for persons with autism and similar developmental disabilities; and

Whereas, the adolescents and adults with autism and similar developmental disabilities and their families need diagnostic, treatment, and consultation services not currently available, and the staff of residential and day programs need training and consultation if they are to be able and willing to serve autistic and similarly disabled persons.

Now, therefore, the General Assembly of North Carolina enacts:

Section 1. The Department of Human Resources, Division of Mental Health, Mental Retardation, and Substance Abuse Services, in cooperation with Division TEACCH of the North Carolina School of Medicine, shall establish a comprehensive living and training community facility to meet the multiple needs characteristic of persons with autism and with similar developmental disabilities. This facility shall provide vocational training in a wide variety of areas, intensive social skills work, adult educational opportunities, recreational and leisure experiences, and independent living skills development. The facility will also serve, under the direction of Division

TEACCH, as a multi-disciplinary research and professional training center.

Sec. 2. The Department of Human Resources, Division of Mental Health, Mental Retardation, and Substance Abuse Services shall establish one additional group home for persons with autism and similar developmental disabilities.

Sec. 3. The Department of Human Resources shall contract with Division TEACCH of the University of North Carolina School of Medicine for consulting services at each of its five existing regional centers in order to enable the centers to provide more and better service to the autistic adolescents and adults across the state and to enable them to provide additional consultation and training to residential and day programs.

Sec. 4. The funds designated as Priority 28 in the budget prepared by the Director of the Budget and the Advisory Budget Commission for the 1985-87 biennium, when appropriated by the General Assembly to the Department of Human Resources for a five hundred thousand dollar ($500,000) reserve to provide for services for autistic adults, shall be allocated as follows:

(1) To the Department of Human Resources, the sum of ninety-three thousand, seven hundred fifty dollars ($93,750) for fiscal year 1985-86, and the sum of one hundred eighty-seven thousand five hundred dollars ($187,500) for fiscal year 1986-87, to contract with Division TEACCH, University of North Carolina School of Medicine, to provide consulting services to implement Section 3 of this act;

(2) To the Department of Human Resources, Division of Mental Health, Mental Retardation, and Substance Abuse Services, the sum of one hundred eighty-three thousand five hundred dollars ($183,500) for fiscal year 1985-86, and the sum of one hundred thirty-five thousand one hundred dollars ($135,100) for fiscal year 1986-87, to establish the group home mandated by Section 2 of this act; and

(3) To the Department of Human Resources, Division of Mental Health, Mental Retardation, and Substance Abuse Services, the sum of two hundred twenty-two thousand seven hundred fifty dollars ($222,750) for fiscal year 1985-86, and the sum of one hundred seventy-seven thousand four hundred dollars ($177,400) for fiscal year 1986-87, to establish the living and training community facility mandated by Section 2 of this act.

Sec. 5. This act shall become effective July 1, 1985.

Appendix J

PERSONS WHO HAVE EITHER SPOKEN AT PUBLIC HEARINGS OR WRITTEN TO THE COMMISSION IN SUPPORT OF INCLUSION OF OTHER DEVELOPMENTAL DISABILITIES IN CHAPTER 122.

1. Marilea Grogan, Member, N.C. Council on Developmental Disabilities.
2. Alice Lutz, Parent, Mt. Holly
3. Doug Mitchell, Chairman, Charlotte United Cerebral Palsy Council
4. Pat McIntosh, Parent, Charlotte
5. Irwin Coffield, Parent, Charlotte
6. Donna Wells, Private Therapist, Charlotte
7. Nancy Wiggins, Concerned Citizen, Charlotte
8. Ed Hinson, Concerned Citizen, Charlotte
9. Anne Laukitis, Director, Charlotte United Cerebral Palsy Center
10. Kathy Mitchell, Parent, Charlotte
11. Bernard Clark, Concerned Citizen, Charlotte
12. Jayne Benavides, Concerned Citizens, Charlotte
13. Hazel Solomon, Concerned Citizen, Charlotte
14. Randy Bettis, Parent, Charlotte
15. Johnnie Sue Dearman, Parent, Charlotte
16. Barbara Childress, Parent, Charlotte
17. Wayne Covington, Parent, Southport
18. Gary Fisher, Epilepsy Association of North Carolina
19. Janet Barwick, President, Concerned Citizens for The Rights of Handicapped Children
20. Jean Broadway, Concerned Citizens, Lenoir County
21. Mary Lou Warren, Board Member, North Carolina Council on Developmental Disabilities
22. Debra Wood, Parent, Matthews
23. Joanne Jeffries, President, North Carolina Society for Autistic Adults and Children

24. Wyatt Buckingham, Parent, Raleigh
25. Evans Taylor, Parent, Raleigh
26. Mary Ann Kelley, Parent, Wake Forest
27. Jim Everest, Executive Director, United Cerebral Palsy of North Carolina
28. Sandra S. Link, Occupational Therapist, Greenville
29. Lynn and Vikki Grady, Parents, Kinston
30. Nancy Tyndall, Parent, Kinston
31. Helen Morrison, Disabled Person, Raleigh
32. Ralph Johnson, Concerned Citizen, Raleigh
33. Nancy Bundy, Director, United Cerebral Palsy of Wilmington
34. Brenda Potter, Parent, Wilmington
35. Julia Rehder, Social Worker, Wilmington
36. Glenn Aldridge, Chairman, Gaston County for Autistic Citizens
37. Donald Swanner, (address unknown)
38. Sally Morrison, New Hill
39. James E. Harris, Raleigh
40. Julie Connell, (address unknown)
41. David A. Medlin, Raleigh
42. Joan and Richard Wiggs, Kinston
43. Bennie C. Glenn, Parent, Durham
44. Mr. and Mrs. J.N. Lord, Parents, Charlotte
45. Barbara P. Baker, Parent, Charlotte
46. Mr. and Mrs. James A. Wells, Grandparents, Wilmington

PERSONS WHO HAVE WRITTEN OR SPOKEN AT PUBLIC HEARINGS REGARDING SERVICES FOR HEAD INJURED PERSONS

1. Alice Roye, Raleigh
2. Robert Roye, Raleigh
3. Fran Thomas, Sanford
4. Carolyn Lauffer, Raleigh
5. Margaret W. Coltrane
6. Mrs. H.D. Harrison, Jr., Parent, Raleigh

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE SERVICES OFFICE
2129 STATE LEGISLATIVE BUILDING
RALEIGH 27611

GEORGE R. HALL, JR
LEGISLATIVE ADMINISTRATIVE OFFICER
THOMAS L. COVINGTON
DIRECTOR OF FISCAL RESEARCH
TERRENCE D. SULLIVAN
DIRECTOR OF RESEARCH
GERRY F. COHEN
DIRECTOR OF LEGISLATIVE DRAFTING

LEGISLATIVE SERVICE OFFICE
TELEPHONE: 733-7044
FISCAL RESEARCH DIVISION
TELEPHONE: 733-4910
RESEARCH DIVISION
TELEPHONE: 733-2578
LEGISLATIVE DRAFTING DIVISION
TELEPHONE: 733-6660

February 1, 1984

M E M O R A N D U M

TO: Mental Health Study Commission

FROM: Gerry F. Cohen
Director of Legislative Drafting

SUBJECT: Recodification of Chapter 122 of the General Statutes

Resolution 50 of the 1983 General Assembly directs the Mental Health Study Commission to prepare for the 1985 General Assembly a recodification draft of Chapter 122 of the General Assembly and related statutes.

Senator Royall, Chairman of the Commission, has asked me to provide legal assistance in the preparation of the draft.

I would like to make some general comments about what a recodification or revision is. Except as noted otherwise, all citations below are to Sutherland's Statutory Construction, Fourth Edition.

"In the preparation of a code, usually a committee of experts is first authorized to draw it up. It is generally understood that the codifying agency has authority to eliminate obsolete provisions, combine overlapping provisions, and even rewrite the law where inconsistent provisions are found, in order to eliminate the inconsistencies, but to make no other changes than that. After the code has been prepared in this fashion, it is then enacted." (§36.13).

"A revision is an act which restates the law embodied in one or more prior acts in order to clarify and harmonize the provisions of the prior acts and which may alter, add, or omit provisions. A codification is a revision and also a systematic arrangement of all the statutes of the state...concerning a general field of the law." (§22.27).

To recodify is to codify again (Webster's Third New International Dictionary, at 1896).

"No great difference between a code and a revision is to be observed" (§48.09).

"Legislative commissions are...used commonly to prepare revisions...of statute law...referring to particular subjects. In construing provisions in an official revision...courts have referred to the report...of the revision commission for aid." (§48.09).

Of course, the Commission is free to include substantive revisions if it deems them appropriate.

What is the history of codification or revisions of the mental health laws of North Carolina? The 1899 General Assembly passed a 26 page act entitled "An act to revise, consolidate and amend the insanity laws of this state." (Chapter 1, Laws of 1899). This was apparently the first attempt at a comprehensive revision, and the citations to Chapter 122 of the General Statutes do not indicate any since then.

Mental health laws certainly date back well before then.

In doing the recodification, it might be well to take several examples to start.

G.S. 122-21 states that, "The close of the fiscal year shall be that established for all state agencies." However, since G.S. 147-85 states that, "The fiscal year of the State government shall annually close on the thirtieth day of June", G.S. 122-21 is unnecessary and redundant.

G.S. 122-53 states that, "The members of the General Assembly shall be ex officio visitors of all hospitals under the control of the Department of Human Resources." To begin with, this statute is on its face not limited to mental hospitals, although it is codified in Chapter 122. Although the General Statutes indicate its root is Chapter 1184, Session Laws of 1963, in fact Section 37 of Chapter 1, Session Laws of 1899 provided that, "The board of public charities and the members of the general assembly shall be ex officio visitors of all state hospitals."

Even before this, Section 22 of Chapter 1, Laws of 1848-49 provided that, "The Governor, Judges of the Courts and members of

the General Assembly shall be ex-officio visitors of the State Hospital."

The derivation of the term "visitor" is obscure. Black's Law Dictionary states that a visitor is "...an official appointed to see and report upon persons found lunatics by inquisition."

The United States Supreme Court has stated that, "To all eleemosynary corporations a visitorial power attaches as a necessary incident; for those corporations, being composed of individuals; subject to human infirmities, are liable, as well as private persons, to deviate from the end of their institution." The law, therefore has provided, that there shall somewhere exist a power to visit, inquire into, and correct all irregularities and abuses in such corporations, and to compel the original purposes of the charity to be faithfully full filled. No technical terms are necessary to assign or vest the visitorial power.

Trustees of Dartmouth College v. Woodard, 4 Wheat. 674-675 (1819).

The United States Supreme Court later noted that, "In the United States, the Legislature is the visitor of all corporations founded by it for public purposes." (Guthrie v. Harkness, 199 U.S. 149, 159 (1905).

Is this visitation statute obsolete, or is it necessary in modern times? This is an example of a type of question that is looked at during a recodification.

G.S. 122-14 speaks to transferring to the "United States Veterans Bureau" certain veterans. This reference to the "Veterans Bureau" is archaic and needs to be updated. In addition, G.S. 34-16 also speaks to commitment of veterans to mental hospitals, and should probably be codified with the new Chapter 122C, rather than in Chapter 34.

G.S. 122-23 states that, "If any person shall assist any inmate of any State hospital to escape therefrom he shall be guilty of a misdemeanor." G.S. 122-54 states that, "If any person shall assist any patient of any state hospital for the mentally ill, mentally retarded, or inebriate to leave said hospital without authority, he shall be guilty of a misdemeanor." Those two statutes are overlapping.

G.S. 8B-1, Rule 601 speaks to testimony of a lunatic and the rights of the committee of a lunatic. These are archaic words. G.S. 51-12 still refers to "idiot, imbecile, mental defective...", and is similarly archaic, and G.S. 59-62 also refers to a lunatic.

G.S. 35-1.1 and G.S. 35-1.7(30) both define "mental illness", but not identically.

These are all examples of various statutes that a recodification should look at.

GFC/no
N7-39

CHAPTER 122C

Mental Health, Mental Retardation and Substance Abuse Act of 1985.

List of Substantive Changes

Substantive changes are those changes that change policy and therefore change the way that people do business. These proposed changes emerged during the development of the draft of Chapter 122C through discussion by committee, from recommendations of the Division, or from comments of the general public and were adopted by the MHSC.
On the draft of Chapter 122C these are noted in the margin by a number such as SC #1. They are listed here in the sequence in which they appear in the Chapter and the section or subsection wherein they are found is designated.

Article 1--General Provisions

1. 3(8). Definition on dangerousness is revised to allow extreme destruction of property to be considered as dangerousness to others and to allow previous episodes of dangerousness to self or others be considered in determining predictability of future dangerousness.

Article 2--Licensure of Facilities for the Mentally Ill, the Mentally Retarded, and Substance Abusers.

2. 22(8). Adds respite care for no more than 2 individuals to be exempt from licensure requirements.

Article 3--Clients' Rights

Some general considerations need to be presented prior to a specific listing of substantive changes. First the MHSC followed a general philosophy that within the Clients' Rights Article current policies should be incorporated into the statute. Therefore the Article includes much new language in addition to the current Chapter 122, but this language is not listed as a substantive change. Technically current State policies have only applied to area and State facilities, so in some ways codifying current policy is a policy change as the statute applies to private facilities as well as public facilities. Finally the current statute does not differentiate between 24-hour facilities and other facilities. Therefore, many of the current provisions in Clients' Rights technically, although not in practice, apply to all facilities, but in this draft rights are designated for 24-hour facilities where that makes sense.

3. 53(c) & (d). Current policy allows sharing of client record with client or legally responsible person upon the approval of a qualified professional; a second opinion is sought if the qualified professional denies access. If the second professional denies access, then the record is not shared. Current policy also allows a record to be corrected if client or legally responsible person and qualified professional agree. Current policy does not allow release to an independent professional. Draft allows release to an independent professional if the facility denies access and does not include either a second opinion or allow a correction.

4. 53(f). Draft makes an advocate who operates under a contract with the facility an internal advocate as compared with current policy where a contract advocate is an external advocate.

5. 54(e). Adds requirement that minor and legally responsible person be informed of their right to request expunging the record of a minor.

6. 55(a). Revises sharing of client information between North Carolina Memorial Hospital, area and State facilities to be dependent on a need-to-know basis.

7. 55(f). Adds requirement that support service contracts be written agreements.

8. 55(i). Adds provision to allow sharing of information with referring physician.

9. 57(a). Adds 'age appropriate' as modifier in right to treatment. Adds that treatment plan must be implemented. Adds requirement for treatment risk/benefit education.

10. 57(b). Adds staff convenience as an inappropriate reason for medication.

11. 57(d) & (e). Rights to refuse treatment and procedures basically the same as current policy but current policy only refers to psychotropic medications.

12. 60(a). Adds "substantial property damage" as a reason to use restraint or seclusion.

13. 61(a). Adds qualifications for treatment of physical ailments and authority to collect fees for such service.

    Adds 'live as normally as possible' as a part of discharge plan.

14. 62(c). Deletes reference to 24-hour facility as standing 'in loco parentis' and adds goal for separate treatment of minors.

15. 62(e). Limit on restriction of rights revised to 30 days with 7 day observation and 30 day notice. Current restrictions allowed for 60 days.

16. 62(g). Current allowances to limit visiting up to facility director and specific to concerns about contraband revised so that Commission adopts visitation rules for facilities that treat forensic and substance abuse clients.

17. 62(h). Adds allowance for general hospitals to conform visiting hours and outside visits, etc., to same rules as other hospital patients.

18. 64. Current Human Rights Committees in State facilities under rules of Commission and Secretary. Commission to adopt rules for appointment of area human rights committees.

19. 66 & 67. Adds provisions on client abuse and exploitation (consistent with protective services) and adds reporting requirement.

Article 4--Organization and System for Delivery of Mental Health, Mental Retardation, and Substance Abuse Services.

20. 117(7). Removes Secretary's authority to approve appointment of Area Director.

21. 118(a). Adds procedure for changing area board size.

22. 118(e)(6). Changes practicing attorney to attorney licensed to practice as category for designation of area board members.

23. 146. Requires contractual agencies to collect fees.

23a. 144(b). Deletes requirement that copies of all area authority reports be sent to county commissioners.

24. 147(a) Changes time requirement for settlement of area funds to be based on completed audit.

25. 147(b). Allows State funds to be appropriated for purchase/ renovation of residential facilities.

26. 147(j). Allows local funds to be used to renovate contract agency real property.

27. 154. Current law does not address the question of whether or not area authorities are State agents.

28. 181. Deletes Secretary's authority to 'establish' institutions. Adds authority of Secretary to close institutions with approval of Governor and Council of State.

Article 5--Procedures for Admission and Discharge of Clients.

29. 205. Expands provisions for what is to happen when client leaves a facility without permission to apply to private facilities and adds persons to whom notice shall be sent.

30. 206. Transfer procedures simplified to treat private facilities like public facilities. Adds exception for out-of-region transfer of voluntary client. Adds consent on voluntary transfers. Deletes directive or automatic notice to next of kin. Adds allowance for discharge of transferred (for medical reasons) client when both facilities agree

31. 207. Expands confidentiality of court records to adults.

32. 211(b). Adds requirement to advise voluntary client that petition may be initiated if client wants to leave facility.

33. 211(c) & (d). Adds differentiation between medical and non-medical facilities for the purpose of medical examination requirements.

34. 224 & 233. Adds provision for parents or legally responsible person to apply to court for discharge of minor or incompetent adult.

35. 242. Adds provision that allows an adult mentally retarded client of a 24-hour facility to be held for 5 days pending an incompetency proceeding if the individual seeks discharge and the facility believes such discharge would be injurious to client. Deletes ability of 24-hour facility to discharge mentally retarded client because it is in the best interest of the facility.

36. 254. Expands immunity from liability provision to cover inpatient as well as outpatient commitments.

37. 261. Adds criteria for outpatient commitment to the initial petition for commitment.

38. 264, 274, & 284. Notice requirements for hearings under commitment proceedings changed from certified mail to first class mail and 48 hours changed to 72 hours prior to hearing.

39. 265 & 273. Adds allowance that sheriff may wait during the examination of an outpatient commitment respondent.

40. 266. Adds variation on procedure for second examination in an inpatient setting when respondent is held in the same facility where the first examination was conducted.

41. 267. Adds discretionary compulsory process for the appearance of respondent at outpatient commitment hearing. Adds outpatient respondent's right to confront and cross examine witnesses.

42. 268. Adds authority of State to request continuance of inpatient commitment hearing.

43. 272 & 288. Adds authority for State to appeal commitment orders.

44. 273. Adds provision to allow a mid-commitment examination of an outpatient respondent to be used as first examination for an inpatient proceeding.

45. 273. Adds direction when outpatient respondent moves to an unknown location.

46. 274(f). Allows a new 90-day order on transfer from inpatient to outpatient commitment.

Article 5--Part 8 Substance Abusers.

The separate Part 8 is procedurally duplicative of current law adjusted for any changes in Part 7. Reflects current policies of treating substance abuse as a distinct illness from mental disorders. Over the last six years the trend has been to treat substance abusers locally and to remove detoxification responsibilities from State psychiatric facilities. Listed are only those provisions which vary from current law.

47. 283(d). When commitment criteria are met at first examination, the physician has full authority to determine whether treatment should be on an outpatient or inpatient basis (current law requires inpatient).

48. 285 & 293. When respondent is taken to a 24-hour facility for admission, the second examination may be conducted by a qualified professional rather than by a physician. Added requirement for a written justification for release from commitment.

49. 286(d). Deletes substance abusers' right to waive appointment of counsel.

50. 287. Court disposition allows commitment to the area authority rather than to an inpatient facility per se. Under the order the treatment professional determines in- or outpatient care as needed as long as inpatient stay is no longer than 45 days. If inpatient stay will be longer than 45 days then a supplemental hearing is required to justify that length of inpatient care.

51. 287. First commitment order for 180 (rather than 90) days.

Article 6--Special Provisions.

52. 405. Establishes Butner Planning Commission with some members appointed by county commissioners (currently established by DHR directive).

53. 408. Allows development of Butner water and sewer system.

54. 410. Requires establishment of an emergency management agency for Butner.

APPENDIX M

RECODIFICATION

LIST OF DELETIONS FROM CHAPTER 122

The following sections or parts of sections that appear in current law (Chapter 122) have been deleted from the draft of Chapter 122C for one of the following reasons:

Obsolete: The language or concept is archaic and has remained in the Statute even though it is not necessary.

Conflicting: The language or concept conflicts with other language in the draft.

Specific to General: The specific language is deleted but the concept is covered in more general provisions in the draft.

(122-)

1. 1.2 (4) - Department to coordinate programs of prevention and rehabilitation through home care and maternal and child health.

   SPECIFIC TO GENERAL

2. 1.2 (6) - Department and area authorities to cooperate with Developmental Evaluation Clinics and Child Health Supervisory Clinics. SPECIFIC TO GENERAL

3. 3, Paragraph 2 - Authority of Department of Human Resources to admit certain classes of people to state institutions.

   OBSOLETE

4. 7.1 (b) - Authority of State Alcoholic Rehabilitation Program.

   OBSOLETE AND SPECIFIC TO GENERAL

5. 11.4 - State facility directors to report monthly to Department. SPECIFIC TO GENERAL

6. 13.1 - Authority to hold committed client transferred from N.C. Memorial Hospital to state facility. SPECIFIC TO GENERAL

7. 15 - Transfer of dangerous clients or prisoners to general wards in certain institutions. OBSOLETE

8. 22 - Court may remit penalities imposed under this Chapter. OBSOLETE

9. 28 - Outside compensation to physicians employed by Department. SPECIFIC TO GENERAL

(122-)

10. 31 - Department establishes salaries in state facilities.
SPECIFIC TO GENERAL

10a. 33 - Deleted Schools for the Deaf. OBSOLETE

11. 35 - Volunteer firemen may be rewarded by Department.
OBSOLETE

12. 35.13 thru 35.17 - Department to set up state and local alcoholism programs. OBSOLETE

13. 35.24 thru 35.27 - Department to set up local drug abuse programs.
OBSOLETE

14. 35.36 (6) - Department to implement local programs.
CONFLICTING

15. 35.36 (8) - Definition of mental health programs.
OBSOLETE

16. 35.49 (b) - Last sentence is cross reference stating provisions of 122-35.40B and 122-35.40C apply to all area authorities.
SPECIFIC TO GENERAL

17. 35.52 - Area facility allowed 60 days notice prior to revocation or denial of a license. CONFLICTING

18. 36 - Definitions of hospitalize, inebriate, mental health professional, mental retardation professional, treatment plan, habilitation plan, and patient. OBSOLETE OR SPECIFIC TO GENERAL

19. 41 - Payment of expenses when individual committed from county other than county of residence.
OBSOLETE - except transportation expenses covered in 122C-251.

20. 43 - Fees paid to physician performing examination prior to commitment. OBSOLETE

21. 48 - Clerks of Court to maintain records of their commitment proceedings. SPECIFIC TO GENERAL

22. 50 - Transportation of individual to hospital. CONFLICTING

23. 56.2 - Definitions of inebrity, qualified physician and treatment facility. OBSOLETE OR SPECIFIC TO GENERAL

24. 56.7 - Definition of inebriate. OBSOLETE

25. 58.6 - Respondent, released prior to commitment hearing, to be returned to facility if he does not appear at hearing.
OBSOLETE

26. 58.22 - Short-term treatment for alcoholic in need of care.
SPECIFIC TO GENERAL

(122-)

27. 58.23 - Long-term residential care for alcoholic who has not progressed in treatment. SPECIFIC TO GENERAL

28. 65.11 (d) - Procedures for commitment of alcoholic in need of care, Section #26 and #27. SPECIFIC TO GENERAL

29. 71 - Financial responsibility of parents, guardians or patients. CONFLICTING

30. 71.3 - Provisions not applicable to mental retardation centers. CONFLICTING OR OBSOLETE

31. 71.6 - Duty of Council on Developmental Disabilities. OBSOLETE

32. 74 - Private hospitals part of public charities. OBSOLETE

33. 81 - Guardian of mentally ill or retarded persons to pay expenses out of estate. SPECIFIC TO GENERAL

34. 82 - Fees and charges for examination. OBSOLETE

N16-55

RECODIFICATION LIST OF CONFORMING CHANGES TO RELATED STATUTES

Sections 3 through 66 of the mental health recodification are conforming or implementing language. An analysis of the changes appears below.

CONFORMING means the section is necessary to conform to language changes in new Chapter 122C.

MODERNIZE means the section is to update language to reflect current practice or terminology.

OBSOLETE means the section is to repeal or amend obsolete language.

TECHNICAL means the section is to make related technical amendments to the General Statutes.

TRANSITIONAL means the section is to cover the transition from Chapter 122 to Chapter 122C.

	TYPE OF CHANGE	SUBJECT MATTER
Section 3.	CONFORMING	INDIGENT COUNSEL
Section 4.	CONFORMING	INDIGENT COUNSEL
Section 5.	OBSOLETE	JUVENILE DISPOSITIONS
Section 6.	CONFORMING	PUBLIC INTOXICATION
Section 7.	CONFORMING	PUBLIC INTOXICATION
Section 8.	OBSOLETE	INVESTIGATION OF NONSUPPORT
Section 9.	CONFORMING and OBSOLETE	INCAPACITY TO PROCEED
Section 10.	CONFORMING	INCAPACITY TO PROCEED

Section 11.	CONFORMING	INCAPACITY TO PROCEED
Section 12.	CONFORMING and TECHNICAL	NOT GUILTY-INSANITY
Section 13.	OBSOLETE	GUARDIANSHIP CREATION
Section 14.	CONFORMING	COMMITMENT TO V.A.
Section 15.	MODERNIZE	INEBRIATE DEFINED
Section 16.	MODERNIZE	MENTAL DISEASE DEFINED
Section 17.	CONFORMING	GUARDIANSHIP
Section 18.	CONFORMING	GUARDIANSHIP
Section 19.	CONFORMING	GUARDIANSHIP
Section 20.	CONFORMING	GUARDIANSHIP
Section 21.	MODERNIZE	GUARDIANSHIP
Section 22.	CONFORMING	GUARDIANSHIP
Section 23.	OBSOLETE	GUARDIANSHIP
Section 24.	OBSOLETE	GUARDIANSHIP
Section 25.	OBSOLETE	GUARDIANSHIP
Section 26.	OBSOLETE	PROBATE OF DEED
Section 27.	OBSOLETE	MARRIAGE OF IDIOT
Section 28.	CONFORMING	UMSTEAD ACT
Section 29.	MODERNIZE	UNIFORM PARTNERSHIP ACT
Section 30.	MODERNIZE	TREATMENT OF MINORS
Section 31.	TECHNICAL and CONFORMING	TREATMENT OF MINORS
Section 32.	CONFORMING	DRUG TREATMENT LICENSE
Section 33.	TECHNICAL and CONFORMING	DEBT COLLECTION SETOFF
Section 34.	CONFORMING	ABUSED ADULT ACT
Section 35.	MODERNIZE	ABUSED ADULT ACT
Section 36.	CONFORMING	DAY CARE LICENSING

Section 37.	CONFORMING	ALCOHOLISM RESEARCH
Section 38.	OBSOLETE	PERSONNEL ACT
Section 39.	CONFORMING	CHILD PLACING REGULATION
Section 40.	MODERNIZE	FUNDS OF DECEASED INMATES
Section 41.	CONFORMING	HOSPITAL LICENSING ACT
Section 42.	CONFORMING	CHEMICAL DEPENDENCY INSURANCE
Section 43(a).	CONFORMING	CHEMICAL DEPENDENCY INSURANCE
Section 43(b).	TRANSITIONAL	CHEMICAL DEPENDENCY INSURANCE
Section 44.	OBSOLETE	DRUG EDUCATION PROGRAM
Section 45.	MODERNIZE	STATE COMMISSION MEMBERS
Section 46.	CONFORMING	STATE COMMISSION MEMBERS
Section 47.	TECHNICAL	MENTAL HEALTH COMMISSION
Section 48.	TECHNICAL	MENTAL HEALTH COMMISSION
Section 49.	CONFORMING	MENTAL HEALTH COMMISSION
Section 50.	CONFORMING	MENTAL HEALTH COMMISSION
Section 51.	CONFORMING	MENTAL HEALTH COMMISSION
Section 52.	CONFORMING	MENTAL HEALTH COMMISSION
Section 53.	CONFORMING	MENTAL HEALTH COMMISSION
Section 54.	TECHNICAL	MENTAL HEALTH COMMISSION
Section 55.	TECHNICAL	PRISON HEALTH SERVICES
Section 56.	TECHNICAL	COUNTY HUMAN RESOURCES
Section 57.	TECHNICAL	COUNTY TAXATION
Section 58.	TECHNICAL and CONFORMING	COUNTY FUNDING
Section 59.	TECHNICAL	COUNTY HOSPITALS
Section 60.	CONFORMING	VOTING BY INCOMPETENTS
Section 61.	CONFORMING	RIGHT TO HOUSING

Section 62.	CONFORMING	FAMILY CARE ZONING
Section 63.	TRANSITIONAL	TRANSITION
Section 64.	TRANSITIONAL	SAVINGS CLAUSE
Section 65.	TECHNICAL	SEVERABILITY
Section 66.	TECHNICAL	EFFECTIVE DATE

GFC/no

N16-55

Appendix O

MENTAL HEALTH STUDY COMMISSION

Documents Related to Recodification Draft

Many of the decisions to include, change or delete specific provisions within the preparation of the draft of Chapter 122C were made based on verbal discussion at committee meetings. Included in Appendix O, however, are copies of any formal memoranda that were utilized in the decision making process.

Table of Comparable Sections for Chapters 122 and 122C

Prepared by Legislative Services Office

Chapter 122 Sec.	Chapter 122C Sec.
122-1	122C-111
	122C-112
	122C-131
	122C-181
122-1.1A	122C-3
122-1.2	122C-112
	122C-113
	122C-181
122-3	122C-112
	122C-114
122-4	122C-112
122-7	122C-112
	122C-181
122-7.1	122C-112
	122C-181

Chapter 122 Sec.	Chapter 122C Sec.
122-7.2	122C-112
	122C-181
122-8.1	122C-52
	122C-54
	122C-55
122-8.2	122C-56
	122C-52
122-11.6	122C-112
122-12	122C-112
122-13	Repealed
122-13.1	Repealed
122-14	Repealed
122-15	Repealed
122-19	122C-185
122-21	Repealed

Chapter 122 Sec.	Chapter 122C Sec.
122-22	Repealed
122-23	122C-65
	122C-205
122-23.1	122C-21
122-23.2	122C-3
122-23.3	122C-22
122-23.4	122C-23
122-23.5	122C-24
122-23.6	122C-25
	122C-192
122-23.7	122C-26
122-23.8	122C-27
122-23.9	122C-28
122-23.10	122C-29
122-24	122C-254
122-24.1	122C-122
122-27	122C-205
122-28	Repealed
122-31	Repealed
122-33	122C-183
122-34	122C-184
122-35	Repealed
122-35.13	Repealed
122-35.14	Repealed
122-35.15	Repealed
122-35.16	Repealed
122-35.17	Repealed
122-35.24	122C-112
122-35.25	Repealed
122-35.26	122C-112
122-35.27	122C-143

Chapter 122 Sec.	Chapter 122C Sec.	Chapter 122 Sec.	Chapter 122C Sec.
122-35.35	122C-2	122-35.38	122C-111
	122C-101		122C-112
	122C-115		122C-141
	122C-117		122C-181
	122C-131	122-35.39	122C-115
	122C-132		
	122C-191		
122-35.36	122C-3		122C-118
	122C-112	122-35.40	122C-118
	122C-115		122C-119
	122C-116	122-35.40A	122C-120
	122C-132	122-35.40B	122C-152
	122C-141	122-35.40C	122C-153
122-35.37	122C-111	122-35.40D	Repealed
	122C-112	122-35.41	122C-141
	122C-115		122C-145
	122C-117		122C-191

Chapter 122 Sec.	Chapter 122C Sec.	Chapter 122 Sec.	Chapter 122C Sec.
122-35.42	122C-115	122-35.45A	122C-159
122-35.43	122C-112	122-35.46	122C-157
	122C-117	122-35.47	122C-146
	122C-132	122-35.48	122C-158
	122C-143	122-35.49	122C-117
122-35.44	122C-56		122C-141
	122C-112		122C-142
	122C-117	122-35.50	122C-145
	122C-141	122-35.51	Repealed
	122C-144	122-35.52	122C-145
122-35.45	122C-111	122-35.53	122C-141
	122C-117		122C-143
	122C-121		
	122C-155		122C-147
	122C-156	122-35.54	122C-148

Chapter 122 Sec.	Chapter 122C Sec.
122-35.55	122C-149
122-35.56	122C-150
122-35.57	122C-151
122-36	122C-3
122-37	122C-341
	122C-348
122-38	122C-343
	122C-345
122-39	122C-345
	122C-346
	122C-348
122-40	122C-345
	122C-347
122-40.1	122C-344
122-41	Repealed
122-42	122C-251
122-43	Repealed
122-48	122C-264
122-49	122C-251
122-50	Repealed
122-51	122C-204
122-53	122C-186
122-54	122C-65
	122C-205
122-55	122C-203
122-55.1	122C-2
	122C-51
122-55.2	122C-53
	122C-58
	122C-62
122-55.3	122C-60
122-55.4	122C-59
122-55.5	122C-51

Chapter 122 Sec.	Chapter 122C Sec.
122-55.6	122C-57
	122C-61
122-55.7	122C-58
122-55.8	122C-51
	122C-62
122-55.13	122C-51
	122C-62
122-55.14	122C-62
122-56.1	122C-201
122-56.2	Repealed
122-56.3	122C-201
	122C-211
	122C-212
122-56.4	122C-321
122-56.5	122C-221
	122C-222
122-56.6	122C-208
122-56.7	122C-223
	122C-224
	122C-231
	122C-232
	122C-233
122-56.8	122C-52
	122C-54
	122C-207
122-56.9	122C-54
122-56.10	122C-312
	122C-313
122-58.1	122C-201
122-58.2	122C-3
122-58.3	122C-261
	122C-281

Chapter 122 Sec.	Chapter 122C Sec.	Chapter 122 Sec.	Chapter 122C Sec.
122-58.4	122C-252	122-58.10A	122C-289
	122C-263	122-58.10A	122C-264
	122C-264		122C-273
	122C-283		122C-274
122-58.5	122C-284		122C-290
122-58.6	122C-266	122-58.10B	122C-274
	122C-285		
122-58.6A	122C-265		122C-291
122-58.7	122C-268	122-58.11	122C-276
122-58.7A	122C-269	122-58.11A	122C-275
122-58.7A:1	122C-267		
	122C-286		122C-292
122-58.8	122C-253	122-58.12	122C-270
	122C-271		
	122C-287	122-58.13	122C-277
122-58.8A	122C-254		122C-293
122-58.9	122C-272		
	122C-288	122-58.14	122C-251
122-58.10	122C-270	122-58.15	122C-332

Chapter 122 Sec.	Chapter 122C Sec.	Chapter 122 Sec.	Chapter 122C Sec.
122-58.16	122C-143	122-65.10	122C-3
	122C-294		
122-58.17	Sec 63(e) (Uncod.)	122-65.11	122C-301
122-58.18	122C-262	122-65.12	122C-302
	122C-282	122-65.13	122C-303
122-58.19	122C-271	122-69	122C-112
122-58.20	122C-264		122C-181
122-58.21	122C-322	122-69.1	122C-112
122-58.22	Repealed		122C-113
122-58.23	Repealed	122-70	122C-241
122-58.24	122C-270	122-71	Repealed
122-58.25	122C-52	122-71.1	122C-242
	122C-54	122-71.2	122C-65
	122C-207	122-71.3	Repealed
122-58.26	122C-54	122-71.4	Repealed
122-58.27	122C-255	122-71.5	Repealed

Chapter 122 Sec.	Chapter 122C Sec.	Chapter 122 Sec.	Chapter 122C Sec.
122-71.6	122C-112	122-95	122C-3
122-72	122C-23		122C-403
122-72.1	Repealed	122-96	122C-405
122-73	122C-112	122-97	122C-406
	122C-115	122-98	122C-408
122-74	Repealed	122-98.1	122C-112
122-81	Repealed		122C-181
122-81.1	Repealed	122-98.2	122C-112
122-81.2	Repealed		122C-181
122-82	Repealed	122-98.3	122C-421
122-85	122C-313	122-99	122C-361
122-85.1	122C-311	122-100	122C-362
122-92	122C-401	122-101	122C-363
122-93	Repealed	122-102	122C-364
122-94	122C-402	122-103	122C-365

Chapter 122 Sec.	Chapter 122C Sec.	Chapter 122 Sec.	Chapter 122C Sec.
122-104	122C-366	34-16	122C-333
122-109	122C-112	(34-16 recodified)	
	122C-113		
122-120	122C-431		
122-121	122C-432		
122-122	122C-433		

North Carolina
Department of
Human Resources

Division of
Mental Health,
Mental Retardation,
Substance Abuse Services
A. Eugene Douglas, M.D., Director

James B. Hunt, Jr.
Governor
Sarah T. Morrow, M.D., M.P.H.
Secretary

September 7, 1984

M E M O R A N D U M

TO: Lynn Gunn

FROM: A. E. Douglas, M.D. AED/js

SUBJECT: Recodification of G.S. 122, Proposed Article 4

I have reviewed with my staff Section 122C-113(b) of the proposed Article 4 and have determined that there is no current practice in the Division of retaining staff to provide psychiatric and psychological services to the Department of Correction.

This section appears to be a carry over from times past and should be deleted. Section 122C-113(a) adequately covers cooperation between the Secretary and other agencies.

AED/j

cc: Angie McMillan

Albemarle Building, 325 N. Salisbury St. Raleigh 27611 • 919/733-7011

STATE OF NORTH CAROLINA

DEPARTMENT OF HUMAN RESOURCES

325 NORTH SALISBURY STREET

RALEIGH 27611

JAMES B. HUNT, JR.
GOVERNOR

SARAH T. MORROW, M.D., M.P.H.
SECRETARY

TELEPHONE
919/733-4534

September 12, 1984

MEMORANDUM

TO: Lynn Gunn, Director
Mental Health Study Commission

FROM: Richard Rideout, Acting Director
Schools for the Deaf

SUBJECT: G. S. 122-33

The above statute was researched according to its application to the Schools for the Deaf. We have not found any evidence of it being utilized in the past, nor do we expect it to be used in the future.

Therefore, since the citation appears in the midst of statutes otherwise exclusively affecting mental health programs, we have no objection to it being rescinded.

Thank you for checking with us prior to taking action.

RR/JW/ss

NORTH CAROLINA ASSOCIATION OF COUNTY COMMISSIONERS

MEMORANDUM

TO: Mental Health Study Commission

FROM: C. Ronald Aycock, Executive Director

DATE: November 15, 1984

SUBJECT: Comments on the Rewrite of Chapter 122 of the General Statutes

We have been asked to comment on the provisions of present G.S. 122-35.39 and G. S. 122-35.40 (proposed recodified G.S. 122C-118 and G.S. 122C-119). These provisions relate to the appointment of persons to the Area Mental Health Boards.

We believe that the present system of appointment is understood, works well and therefore should not be changed. There is merit in the procedure which provides that county commissioners serve on the Mental Health Board for a term concurrent with their term as a county commissioner and that appointees serve at the pleasure of the appointing county commissioners. Both these provisions aid in insuring that the Mental Health Board is responsive to the electorate.

The procedure which provides for the county commissioner appointees in a multi-county area to appoint the remaining members of the board is consistent with the procedure utilized for the district public health boards and is probably the only effective way for the appointments to be made. The requirements in the statute for appointment of persons from a variety of fields requires consultation and compromise. Three county commissioners in a 3-county district can consult and compromise much easier than 15 county commissioners (5 from each county). The only other alternative might be for the entire board of commissioners to confirm and ratify appointments made by the individual commissioners.

On the questions of who decides the size of the area board (15 to 25), I would suggest that the procedure for District Public Health Boards might be utilized. That procedure is found in G.S. 130-37 and provides that the size of a public health board may be increased from 15 members to a maximum of 18 members by agreement of the boards of county commissioners in the district. That agreement is evidenced by the adoption of concurrent resolutions.

We appreciate the opportunity to present our views.

MH Memo/1

ALBERT COATES LOCAL GOVERNMENT CENTER
215 N DAWSON ST. • P. O. BOX 1488 • RALEIGH, NORTH CAROLINA 27602 • TELEPHONE 919/832-2893

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE SERVICES OFFICE
2129 STATE LEGISLATIVE BUILDING
RALEIGH 27611

GEORGE R. HALL, JR.
LEGISLATIVE ADMINISTRATIVE OFFICER
TELEPHONE 733-7044

GERRY F. COHEN, DIRECTOR
LEGISLATIVE DRAFTING DIVISION
TELEPHONE 733-6660

THOMAS L. COVINGTON, DIRECTOR
FISCAL RESEARCH DIVISION
TELEPHONE 733-4910

M. GLENN NEWKIRK, DIRECTOR
LEGISLATIVE AUTOMATED SYSTEMS DIVISION
TELEPHONE 733-6834

TERRENCE D. SULLIVAN, DIRECTOR
RESEARCH DIVISION
TELEPHONE: 733-2578

November 6, 1984

M E M O R A N D U M

TO: Gerry F. Cohen, Director
Legislative Drafting Division

FROM: Sabra J. Faires, Staff Attorney

SUBJECT: Misdemeanors in proposed Chapter 122C

I have reviewed the misdemeanor violations in proposed Chapter 122C and the questions you raised in your memo to me dated September 17, 1984. I suggest the following changes:

1. G.S. 122C-25(b): I suggest that part of this subsection be rewritten to make clear that it is unlawful for any employee of the Department, not just the Secretary, to disclose confidential information or the name of someone who provided information on a licensable facility to someone not entitled to receive the information. Also, I suggest that the term "willfully" be deleted. I notice that the punishment for unlawful disclosure is limited to a fine. The committee may want to consider imprisonment or dismissal from public employment as well, as under G.S. 105-259.

The term "willfully" as used in this context, as in all criminal statutes, specifies the requisite state of mind of the defendant for criminal culpability. The North Carolina Supreme Court has defined a willful act as a wrongful act done without justification or excuse or an act done purposely and deliberately in violation of the law. State v. Arnold, 264 N.C. 348 (1965). Although the meaning of this term is not precise, requiring that a disclosure be willful to be criminal excludes negligent disclosures from its scope. An employee, for example, who should know that a particular piece of information is confidential, but doesn't know this and innocently discloses the information to an unauthorized person would not be guilty of a willful disclosure.

As a practical matter, I think including or excluding the term makes no difference. For clarity, I suggest excluding the term.

Combining these suggestions, part of subsection (b) would read: "Except as required by law, it is unlawful for the Secretary or an employee of the Department to disclose the following information to someone not authorized to receive the information:

(1) Same, except delete "or unless a court of competent jurisdiction orders disclosure"

(2) Same

Violation of this subsection is a misdemeanor punishable by a fine, not to exceed five hundred dollars ($500.00)."

2. G.S. 122C-28: I suggest that this section be reworded to emphasize the crime and not the punishment and to clarify the last sentence, which I do not understand. The committee may want to consider adding imprisonment as a punishment. Operating without a revenue license under Article 2 or 2C of Chapter 105 is a general misdemeanor punishable by 2-years' imprisonment, fine, or both. (G.S. 105-109(b) and G.S. 105-113.69(d)).

Combining these suggestions, 122C-28 would read:

"§ 122C-28. Penalties.--Operating a licensable facility without a license is a misdemeanor and is punishable by a fine, not to exceed fifty dollars ($50.00), for the first offense and a fine, not to exceed five hundred dollars ($500.00), for each subsequent offense. Each day's operation of a licensable facility without a license is a separate offense." (Or, if the last sentence means what it says - If a person convicted of operating a licensable facility without a license continues to operate the facility without a license, each day's operation without a license is a separate offense.)

3. G.S. 122C-65(a): This subsection makes it a general misdemeanor to violate any provision of Article 3. It is difficult to determine exactly what activity is being proscribed by this statement. Article 3 concerns confidential information and clients' rights. As written, the words "unless otherwise provided by law" have no meaning because the Article does not provide any lesser or greater penalties. I recommend that the committee rewrite this subsection to describe the activity it intends to make criminal. Whatever is done, I suggest that the word "willfully" be omitted. If the violation is an unlawful disclosure of confidential information, the penalty should be the same as for unlawful disclosure of information under G.S. 122C-25(b).

4. G.S. 122C-65(b): If subsection (a) of 122C-65 is rewritten, the penalty for violating subsection (b) needs to be specified. The activities described in (b)(3) are independent crimes.

5. G.S. 122C-66(b): I suggest that this subsection be rewritten to read: "It is unlawful for an employee of or volunteer at a facility to commit client abuse or client exploitation."

6. G.S. 122C-66(g): This subsection conflicts with the knowing and willful requirement of G.S. 122-65(a), so these two must be reconciled. As stated earlier, I suggest that 122-65(a) be rewritten or deleted. This subsection suffers from some of the same vagueness as 122C-65(a), and the second sentence of this subsection is unnecessary. This subsection treats failure to report client abuse, exploitation, or injury (whatever injury is; it is subsumed in the definition of client abuse but then repeated) and disclosing the identity of someone who made a report of client abuse or exploitation the same as actually committing the abuse or exploitation. Again, disclosing information should have the same penalty as other disclosures of confidential information under this Chapter.

7. G.S. 122C-159(g): This subsection makes it a misdemeanor punishable by a fine, not to exceed $500, for a public official, employee, or professional representative to permit unauthorized access to personnel files and requires that the act be "knowing, willful, and with malice". I suggest that these three terms be deleted and that the subsection be rewritten to read: "Permitting access, other than that authorized by this section, to a personnel file of an employee of an area authority is a misdemeanor and is punishable by a fine, not to exceed five hundred dollars ($500.00)."

8. G.S. 122C-159(h): I recommend that this subsection be rewritten to read: "Anyone who, knowing that he is not authorized to do so, examines, removes, or copies information in a personnel file of an employee of an area authority is guilty of a misdemeanor and is punishable by a fine, not to exceed five hundred dollars ($500.00)."

9. G.S. 122C-192: I suggest that part of subsection (b) and subsection (c) be combined and rewritten to correspond to G.S. 122C-25(b), as follows: "Except as required by law, it is unlawful for the Secretary or his representative to disclose:

(1) Same except delete "or unless a court of competent jurisdiction orders disclosure"

(2) Same

Violation of this subsection is a misdemeanor punishable by a fine, not to exceed five hundred dollars ($500.00)."

10. G.S. 122C-407: This section makes it a misdemeanor to violate a provision of Part 1 of Article 6 or a rule or ordinance adopted pursuant thereto. Because no provision of Part 1 states that any act is unlawful, and Part 1 covers such a broad range of topics, many of which the committee may not intend to be possible subjects of crime, I suggest that this section be rewritten to specify the acts that are to be proscribed. The committee should note that criminal liability attaches for violation of a rule as well as a statute. I do not understand how the Secretary can

issue ordinances. Under G.S. 14-4, violation of a local ordinance is a misdemeanor punishable by a fine of not more than $50 or imprisonment for, up to 30 days.

W7-43

RUFUS L. EDMISTEN
ATTORNEY GENERAL

State of North Carolina
Department of Justice
P. O. BOX 629
RALEIGH
27602-0629

August 21, 1984

Mr. Gerry F. Cohen
Director of Legislative Drafting
North Carolina General Assembly
2129 State Legislative Building
Raleigh, North Carolina 27611

Re: Ability to Confront Evidence in Commitment Hearings

Dear Mr. Cohen:

Reference is made to your memorandum of August 6, 1984. Therein you queried the Attorney General regarding the constitutionality of the language of the proposed G. S. 122C-267(d). More specifically, you inquired as to the propriety of permitting the receipt into evidence in outpatient commitment hearings of a doctor's report and medical records without permitting the respondent to confront and cross-examine appropriate witnesses. In your letter, you further stated:

> " ... The subcommittee voted to ask the Attorney General for an opinion on this matter, and voted that the language " ... the respondent's right to confront and cross-examine witnesses shall not be denied" would be added to proposed G. S. 122C-267(d) by the subcommittee staff if the Attorney Gneeral felt it to be constitutionally required."

In as much as the North Carolina outpatient commitment statutes are unique, there is no United States Supreme Court decision which has specifically addressed this question. The Supreme Court has, of course, considered the issue of the requisite due process involved in situations resulting in inpatient commitments. See Vitek v. Jones, 445 U.S. 480 (1980); Parham v. J. R., 442 U.S. 584 (1979); Addington v. Texas, 441 U.S. 418 (1979). As you recognized in your memorandum, the proposed outpatient commitment statutes

contemplate a considerably lesser degree of deprivation of liberty of the individual than was considered in those cases.

Nevertheless, from the language of these decisions, it is clear that the Supreme Court considered -- either directly or tangentially -- two factors in arriving at its decisions: The denial of liberty and the "stigma" resulting from an individual having been found to be mentally ill. As to the latter point, it is obvious that, regardless of whether inpatient or outpatient treatment is ordered, the entry of a court order containing findings that an individual is mentally ill and dangerous to himself or others can reasonably be expected to have an extremely deleterious and stigmatizing effect upon that individual. It is not unreasonable to expect that it might affect all facets of his life -- including employment opportunities, marriage, social relationships, etc.

The right to confrontation of one's accusers and the entitlement to cross-examination of witnesses in legal proceedings is one of the most basic precepts of American jurisprudence. It is not a right that can lightly be denied. In Mathews v. Eldridge, 424 U.S. 319 (1976) the United States Supreme Court has identified three specific considerations that must be considered in assessing the adequacy of State prescribed due process:

> " ... First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the physical and administrative burdens that the additional or substitute procedural requirements would entail."

In the situation now under scrutiny, private interests are directly affected, the risk of error is clearly present and the value of having adequate procedural safeguards is high, and, most important, any physical and administrative burdens on the State stemming from guaranteeing the basic elements of confrontation and cross-examination are not so great as to warrant variance from the basic due process requirements normally found necessary in ensuring justice to the individual.

As a result of the above, it is the opinion of this Office that the insertion of language entitling the respondent to the right to confrontation and cross-examination is necessary in order to withstand attack on this proposed statute based upon constitutional grounds.

One other comment is in order regarding a matter which was not mentioned in your memorandum. It is noted that the proposed G. S. 122C-267(g) contains the following language:

> " ... A judge may withhold medical record information which he determines will be injurious to the client."

Based upon the marginal notes pertaining to this proposed subsection, it is assumed that this new provision was designed to make it consistent with a theory that damaging information may be withheld during treatment of an individual, notwithstanding the patient's overall entitlement to access to his records. Despite the obvious humanitarian reasoning involved, the entitlement to records in a non-judicial setting is a matter totally different from an individual's entitlement to records which are considered against him in a judicial hearing. (In passing, it should be noted that the inclusion of language permitting the withholding of records considered against him would further accentuate the unconstitutionality of the denial of confrontation and cross-examination of witnesses as discussed previously in this letter.)

In any event, the provision for withholding medical record information from a respondent at this judicial hearing is unconstitutional and should be deleted from the proposed statute.

It is hoped that these comments sufficiently respond to your inquiry.

Sincerely,

RUFUS L. EDMISTEN
Attorney General

William F. O'Connell
William F. O'Connell
Special Deputy Attorney General

WFO:bb

RUFUS L. EDMISTEN
ATTORNEY GENERAL

State of North Carolina
Department of Justice
P. O. BOX 629
RALEIGH
27602-0629

September 14, 1984

HAND DELIVERED

Ms. Lynn E. Gunn
Staff Director
Mental Health Study Commission
1104½ Albemarle Building
Raleigh, North Carolina 27611

Dear Ms. Gunn:

This will respond to your recent request for a list of sections in the August 22, 1984 draft of Chapter 122C of the General Statutes which might need to be addressed in a section on prior rights and pending civil proceedings. The following is a list of items which might warrant further inquiry in this regard. As for the manner in which these subjects should be treated, it is generally advisable that if a client has a prior statutory right and a new set of procedures or rights are subsequently made effective, then whichever set of procedures is less restrictive of the client's liberty and more protective of his rights should be applied to the client as of the effective date of the legislation.

The following proposed statutes might need to be addressed in a section governing prior rights in a section governing prior rights and pending proceedings:

1. G.S. 122C-65 and 122C-66 - these should be applied only to acts committed subsequent to the effective date of the statute to the extent that they create new criminal offenses, based upon the constitutional prohibition of ex post facto laws;

2. G.S. 122C-62(e) - reduction of time period for effective restriction of statutory rights;

3. G.S. 122C-145 - to the extent that this section may effect a substantive change from the appeals process currently set forth in G.S. 122-35.50;

4. G.S. 122C-148 - to the extent that this section may materially alter the procedures of allocating funds to area authorities in the middle of the fiscal year;

5. G.S. 122C-211, et seq. - procedures governing the specific admissions process for voluntary clients could be applied solely to new admissions, although other procedures would apply to all;

6. G.S. 122C-241 - admissions procedures for mental retardation facilities should be applied as soon as possible to all residents of the same;

7. G.S. 122C-290, et seq. - to the extent that this section lessens the procedural rights of substance abusers, it might be inadvisable to apply this section to persons civilly committed under the prior law.

We hope that this information will be of assistance to you. Please contact us if any further questions arise in this matter. With best regards, I remain

Sincerely yours,

RUFUS L. EDMISTEN
Attorney General

Wilson Hayman
Assistant Attorney General

WH:kl

State of North Carolina
Department of Justice

RUFUS L. EDMISTEN
ATTORNEY GENERAL

P. O. BOX 629
RALEIGH
27602-0629

October 23, 1984

Ms. Lynn E. Gunn
Staff Director
Mental Health Study Commission
1162 Albemarle Building
Raleigh, North Carolina 27611

Re: Recodification of Chapter 122;
Prior Rights and Pending Proceedings

Dear Ms. Gunn:

In the memorandum sent to our office by you and Gerry Cohen dated September 26, 1984, you requested that we draft specific language for Section 48 of the proposed bill recodifying Chapter 122 addressing those items listed in my memorandum of September 14, 1984, which were submitted to the Mental Health Study Commission on September 19, 1984. The following language attempts to address the issues found in sections five through seven of my September 14, 1984 memorandum:

(g) G.S. 122C-211 through 122C-233 shall apply to all new admissions of voluntary clients to facilities for the mentally ill and substance abusers occurring on or after January 1, 1986. In addition, G.S. 122C-212 and 122C-224 shall apply to all voluntary clients discharged from such a facility on or after January 1, 1986.

(h) G.S. 122C-241 and 122C-242 shall apply to all persons residing in facilities for individuals with mental retardation on January 1, 1986, who shall be admitted and discharged in accordance with the provisions found therein, as well as to persons admitted to such a facility on or after that date.

(i) Substance abusers committed as outpatients pursuant to G.S. 122-58.7A:1 or 122-58.8 prior to January 1, 1986 shall not be subject to the provisions of G.S. 122C-290 through 122C-293. If appropriate, new involuntary commitment proceedings may be instituted regarding such individuals pursuant to G.S. 122C-281 through 122C-289.

Please contact us if any further questions arise in this matter.

Sincerely yours,

RUFUS L. EDMISTEN
Attorney General

Wilson Hayman

Wilson Hayman
Assistant Attorney General

WH:nj

cc: Gerry Cohen

State of North Carolina
Department of Justice
P. O. BOX 629
RALEIGH
27602-0629

RUFUS L. EDMISTEN
ATTORNEY GENERAL

November 8, 1984

MEMORANDUM

TO: Gerry F. Cohen, Director
Legislative Drafting

Lynn Gunn, Staff Director
Mental Health Study Commission

FROM: William F. O'Connell
Special Deputy Attorney General

Receipt is acknowledged of your memorandum of September 26, 1984 regarding the proposed G.S. 122C-154 in the draft recodification of Chapter 122 of the General Statutes. A copy of that memorandum is attached for convenient reference.

Your first inquiry is as follows:

> "Specifically, the Commission wishes to know whether, given the extensive State involvement in rule making and administration of area authorities under Chapter 122C, proposed G.S. 122C-154(a) would be enforceable in either or both, State or Federal courts, and whether it would be an adequate defense by the State to an action under 42 U.S.C. 1983."

As evidenced by the language in your memorandum, you apparently recognize that the existence of an agency relationship and the results to the State and its officials therefrom should be separately considered. With regard to state court proceedings, the North Carolina Supreme Court in 1979 restated the following basic principles governing agency and its results:

> "Whenever the principal retains the right 'to control and direct the manner in which the details of the work are to be executed' by his agent, the doctrine of respondeat superior operates to make the principal

> vicariously liable for the tortious acts committed by the agent within the scope of his employment... Conversely, a principal is not vicariously liable for the tortious acts of an agent who is not subject to the control and direction of the principal with respect to the details of the work and is subordinate only in effecting a result in accordance with the principal's wishes...In sum, a principal's vicarious liability for the torts of his agent depends on the degree of control retained by the principal over the details of the work as it is being performed. The controlling principal is that vicarious liability arises from the right of supervision and control..." (Vaughn v. Department of Human Resources, 296 N.C. 683, 686 (1979).

From the above, it is obvious that where the elements of agency are present a flat pronouncement that the agency relationship does not exist will not obviate a conclusion by a court that the agency does exist. However, it is a longstanding basic rule of statutory construction that, where statutes are unclear or uncertain, the legislative motive, purpose and intent will be the deciding factor relative to the interpretation of the statutes. I know of no way to gauge the intent of the General Assembly which is better than by a simple statement of that intent by that body.

The present focus on the question of local governmental entities/officials being agents of the State was initiated by the decision in Vaughn, cited above. That decision held that the County Director of Social Services, when acting in the area of foster care placement, was an agent of the State. The North Carolina Supreme Court very specifically limited its decision to the narrow issue of DHR control over "the manner in which the County Director is to execute his obligation to place children in foster homes." It carefully pointed out that it expressed "no opinion on whether the Department of Human Resources might also be liable for negligent acts of the County Director outside of his obligation to place children in foster homes." Opinion cited at page 296.

Overall, that decision held that a determination of the liability of DHR for local governmental agency actions depends upon the application of the principles of agency and respondeat superior to the facts of each individual case under consideration. The situation in Vaughn presented several significant elements of control not present in the area mental health, mental retardation and substance abuse authority statutes. The statute in effect at that time--G.S. 108-19(5), which has now been recodified as G.S. 108A-14(5)--specifically designated the County Director as the "agent"

of the Social Services Commission; the Social Services Commission actually directly appointed a portion of the County Board of Social Services; and the State Social Services Manual very rigidly prescribed the standards and directed the procedures for each minute detail of placement of children in foster care, with virtually no discretion being vested in the local governmental entity/officials.

Turning to the Federal Court decisions, the most common basis for jurisdiction--as affecting state and local governmental actions--is through 42 U.S.C. §1983; the actions brought under that statute are commonly referred to as "constitutional tort" actions. Of course, one of the critical aspects for finding liability in Vaughn, supra., does not exist in §1983 cases since liability under that federal statute cannot be predicated upon respondeat superior. Assessment of damages in a Federal Court against the State itself (under §1983 or otherwise) would be violative of the Eleventh Amendment of the United States Constitution. Assessment of monetary liability against a state official individually can be made only if the official deprives the individual of a well established constitutional or statutory right in a situation where the official either knew he was doing so or should reasonably have known that he was doing so. Under these standards, if (1) a local governmental agency harmed an individual through unconstitutional acts, and if (2) a state official knew or should have known of their unconstitutional nature, and, if (3) the agency relationship exists between the local and the state official, then (4) the state official could be held individually liable for damages to the individual.

In the final analysis, a determination should be made by the General Assembly as to whether the area authorities, officials and employees should be considered as agents of the state. If they are to be agents, a specific provision so stating (as in the case of the provisions of the social service statutes previously described) should be made in the General Statutes. If it is desired that area authorities, officials and employees are not to be considered as agents of the State, then the statutory provisions relative to area authorities should be couched in language so as to reflect that result. As indicated previously no absolute guarantee can be made that including a statement negating agency would automatically preclude a court from finding an agency relationship. However, it would provide a viable basis for so contending if that is the desire of the General Assembly and the matter would have to be ultimately resolved by the appropriate court. The important thing is that the General Assembly should determine what the relationship should be between the state and an area authority, etc., and specifically state its intent in the statutes. The worst scenario conceivable

is to [illegible] make such a provision, to then attempt to defend the State as not having established an agency relationship with the area, and to have a Federal court invade the province of the General Assembly by interpreting the intent and meaning of a statute and thereby direct the method of operating state government.

Your second inquiry is as follows:

> "The Commission also asks whether it is felt that G.S. 122C-154(b) is necessary. If so, would it be better included as subsection (g) of G.S. 122C-152, which deals with the procedure for area authorities to waive sovereign immunity by purchase of insurance?"

It is the opinion of this office that the specific denial of any waiver of sovereign immunity by the State is desirable. Again, the pronouncement of the lack of legislative intent to waive sovereign immunity resolves any issue on the subject. In passing, it should be noted that these comments are not directed to sovereign immunity of the State with regard to contract matters since our State Supreme Court has already determined the nonexistence of such sovereign immunity. See Smith v. State, 289 N.C. 303 (1976). With regard to the Federal courts, they have consistently held that, although the Eleventh Amendment immunity in such courts and the sovereign immunity involved in State court actions are separate things, nevertheless the state's position on sovereign immunity is a very strong item for consideration in determining whether Eleventh Amendment immunity has been waived by the State in given situations. The language proposed for G.S. 122C-154(b) negates any waiver of state's sovereign immunity by virtue of any provision in Chapter 122 in its entirety. G.S. 122C-152 is included in Part 4 of Chapter 122, that Part is entitled "Area Facilities", and G.S. 122C-152 deals only with governmental immunity of area authorities. It would seem that, as two different subjectsare involved, the inclusion of the proposed language for G.S. 122C-154(b) might tend to be confusing and to even lead to incorrect interpretation of that language. Thus, leaving it in G.S. 122C-154 would seem to be the more appropriate course of action.

It is hoped that these comments satisfactorily respond to your inquiries.

WFO:nj

Enclosure